

No. 1-09-2294

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANE DOE, as Mother and Next Friend)	Appeal from the
of JOHN DOE, a Minor,)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 06 L 5964
)	
XYZ CORPORATION, an Illinois Corporation,)	
and JANE SMITH, an Individual,)	
)	Honorable
)	Donald J. O'Brien,
Defendants-Appellees.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in judgment.

ORDER

Held: Judgment in favor of defendants was affirmed where plaintiff failed to provide an adequate record for review.

Plaintiff, Jane Doe, as mother and next friend of John Doe, her son, a three-year-old minor, brought this action against defendants XYZ Corporation (XYZ) and Jane Smith seeking damages for an alleged sexual assault suffered by her son while he was under defendants' supervision. Plaintiff appeals from the verdict entered in favor of defendants, the denial of her posttrial motion, and the trial court's orders limiting her damages evidence. We affirm.

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On November 21, 2006, plaintiff filed an amended complaint sounding in negligence against defendants, XYZ, a business providing daycare services, and Jane Smith, the owner, operator and manager of XYZ. In pertinent part, plaintiff alleged that on April 24, 2006, at approximately 9:35 a.m., her minor son, John Doe, was attending daycare at XYZ and entered a restroom unsupervised. At that time, John Doe was sexually assaulted by another minor attending daycare at XYZ. In her amended complaint, plaintiff contended that the assault was the result of defendants' negligent supervision of John Doe. Specifically, plaintiff alleged defendants were negligent in: (1) failing to monitor the whereabouts and actions of John Doe; (2) failing to provide a safe and secure environment for John Doe; (3) allowing John Doe to wander unsupervised; and (4) otherwise negligently supervising John Doe. Plaintiff further alleged that, as a direct and proximate result of defendants' negligent acts and omissions, John Doe "suffered and will continue to suffer serious personal injury, including physical pain, mental anguish, psychological damage, and other mental and physical injury and disability, and has been hindered in attending to the ordinary affairs of life."

Prior to trial, the parties filed various motions *in limine*. At issue here is a written order of the trial court which denied plaintiff's motion *in limine* 28 seeking to allow her expert, Stephanie Halpern, to testify as to "future prognosis" and future damages. The cause then proceeded to a jury trial.

The jury returned a general verdict in favor of defendants. Additionally, in response to two special interrogatories, the jury found that: (1) defendants were negligent; but (2) defendants' negligence was not a proximate cause of the minor's alleged injuries. The trial court entered judgment on the jury's verdict in favor of defendants.

Plaintiff filed a posttrial motion seeking a new trial solely on the issue of damages. She argued that the jury's finding that defendants' negligence did not proximately cause the minor's injuries was against the manifest weight of the evidence. Plaintiff asserted that defendants had failed to call an expert witness to rebut the testimony of her expert, Ms. Halpern. Ms. Halpern purportedly testified at trial that the minor's behavior was consistent with the behavior displayed by a child who had suffered sexual abuse and that it was likely that the minor's subsequent behavior and emotional issues were caused by the abuse. Plaintiff also contended that she was entitled to a new trial on damages only because the trial court improperly barred Ms. Halpern from testifying about future damages and testifying that defendants' delay in notifying John Doe's parents of the sexual abuse resulted in additional damages.

The trial court denied plaintiff's posttrial motion. The trial court found that defendants were not required to offer expert testimony to contradict Ms. Halpern's opinions and that the lack of a defense expert was "of no consequence." The trial court further recognized that the weight to be given to a witness' testimony is a matter that falls within the province of the jury and that it was apparent from the jury's answer to the special interrogatory on proximate cause that it gave no weight to Ms. Halpern's testimony. The trial court found that it was "understandable" that the jury gave no weight to Ms. Halpern's testimony, given the unusual opinions she advanced at trial. The trial court concluded that the jury's verdict in favor of defendants was not against the manifest weight of the evidence. As to plaintiff's allegations of error pertaining to the damages evidence, the trial court stated that because the jury never reached the issue of damages any error in rulings on evidence pertaining to damages could not be a basis for a new trial. The trial court found that its

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ruling preventing Ms. Halpern from offering opinions as to future damages was not erroneous because Ms. Halpern's state license did not permit her to offer opinions concerning a patient's future prognosis and plaintiff failed to demonstrate that Ms. Halpern possessed the necessary training and experience to offer opinions as to the permanency of the injuries. The trial court also found that the exclusion of Ms. Halpern's testimony that defendants' failure to promptly notify John Doe's parents caused additional injuries was proper because Ms. Halpern lacked the qualifications to give such testimony. The trial court denied plaintiff's request for a new trial solely on the issue of damages. Plaintiff's timely appeal followed.

On appeal, plaintiff contends: (1) the jury's verdict was against the manifest weight of the evidence; and (2) the trial court erred in prohibiting her from offering testimony pertaining to future damages, and damages relating to delay in notification. In response, defendants argue that the record on appeal is incomplete and does not allow for appellate review of plaintiff's arguments. We agree with defendants that the record on appeal is deficient.

The record on appeal does not contain any transcripts from the jury trial. Moreover, the record on appeal is devoid of a bystander's report or an agreed statement of facts filed in lieu of the actual transcripts. See Ill. S. Ct. R. 323(c)(d) (eff. December 13, 2005). The record also lacks a complete account of the parties' pre-trial proceedings. The record on appeal does not contain deposition transcripts or copies of all the pre-trial pleadings and motions filed by the parties, including plaintiff's motion *in limine* 28 concerning the issue of future damages.

The appealing party bears the burden of providing a sufficiently complete record to allow for meaningful appellate review. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "An issue relating

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to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). A reviewing court will resolve all insufficiencies in a record on appeal against the appellant. *Foutch*, 99 Ill. 2d at 392.

First, we cannot consider whether the jury erred in finding that defendants' negligence was not a proximate cause of the minor's injuries. Plaintiff argues that the jury's finding is contrary to Ms. Halpern's trial testimony as to proximate cause. The record contains no evidence of any testimony or evidence at trial. Accordingly there is nothing with which to determine whether the evidence is sufficient or insufficient to support the jury's findings. We do not even know whether Ms. Halpern testified as to proximate cause. Plaintiff has not provided an adequate record to review whether the jury's verdict and findings were against the manifest weight of the evidence.

Second, the record on appeal is inadequate to review any error in the court's denial of plaintiff's motion *in limine* 28 relating to Ms. Halpern's testimony as to future damages. As noted, the motion *in limine* is not contained in the record. Further, the record does not include any material which was considered by the trial court in barring Ms. Halpern's testimony as to future damages. The record does not contain Ms. Halpern's discovery deposition. There are only discovery documents containing synopses of Ms. Halpern's expected testimony, and some of her medical records. Defendants, in their appellee's brief, state that a *voir dire* was conducted as to Ms. Halpern's qualifications. The trial court's order in denying plaintiff's posttrial motion refers to an offer of proof as to the future damages testimony. The record on appeal does not contain *voir dire* proceedings or an offer of proof. We cannot determine the propriety of the trial court's rulings relating to Ms.

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Halpern's future damages testimony.

Finally, as to the trial court's ruling barring testimony about damages from delay in notification, the record is bare. In arguing against the trial court's ruling, plaintiff cites Ms. Halpern's deposition testimony; however, plaintiff has failed to include the deposition transcripts in the record on appeal. Also, the record is unclear as to whether the trial court made a ruling as to delay damages pursuant to a motion *in limine* or during trial. The ruling on delay damages itself is not in the record. Plaintiff argues on appeal that the trial court, in barring delay damages testimony, reviewed Ms. Halpern's employment history. She also argues that the testimony of witness Rachel Knight laid the foundation for Ms. Halpern's delay damages testimony. There is no record of what was presented to the trial court as to Ms. Halpern's qualifications, employment history, or the basis of her opinions. Ms. Knight's testimony is not before us. This issue as to delay damages cannot be reviewed.

Moreover, where the trier of fact finds defendant not liable, any alleged errors pertaining solely to the issue of damages are not grounds for reversal of that finding. *Schuchman v. Stackable*, 198 Ill. App. 3d 209, 231 (1990). Here, the jury found plaintiff failed to prove the element of proximate cause and thus returned a verdict in favor of defendants on the issue of liability. Accordingly, even if the trial court had erred in barring plaintiff's witness from testifying about future and delay damages, plaintiff would not be entitled to reversal of the jury's verdict in favor of defendants on liability. *Schuchman*, 198 Ill. App. 3d at 231.

For the reasons stated herein, we affirm the judgment of the trial court.

Affirmed.