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FIRST DIVISION  
FILED: MARCH 21, 2011

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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AMELIA SARAGOSA, as Plenary Guardian	)	APPEAL FROM THE
of GABRIEL SARAGOSA, a Disabled Person,	)	CIRCUIT COURT OF
	)	COOK COUNTY
Plaintiff-Appellee	)	
	)	
v.	)	No. 05 L 5814
	)	
THE COUNTY OF COOK, a body politic,	)	
d/b/a COOK COUNTY HOSPITAL,	)	HONORABLE
	)	CLARE E. McWILLIAMS
Defendant-Appellant.	)	JUDGE PRESIDING.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Hall and Justice Lampkin concurred in the judgment.

**ORDER**

*Held:* Any error in admitting medical records without proper foundation was harmless, but the trial court erred in denying the defendant's post-trial request for an evidentiary hearing regarding jury misconduct.

The defendant, the County of Cook d/b/a Cook County Hospital (the defendant or the Hospital), appeals following a jury verdict in favor of the plaintiff, Amelia Saragosa, on her claim alleging

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that the defendant's obstetric medical malpractice led to the permanent disability of her son, Gabriel Saragosa. On appeal, the defendant argues that the trial court erred in admitting certain medical records into evidence and that the trial court erred in denying the defendant's request for a post-trial evidentiary hearing regarding purported jury misconduct. For the reasons that follow, we agree with the defendant's second contention, and we reverse the trial court's judgment and remand for further proceedings.

This cause of action arose out of the medical treatment the defendant rendered to the plaintiff just prior to Gabriel's birth. The evidence at trial established generally that, in January 1990, the plaintiff gave birth to Gabriel at the Hospital, and Gabriel was born with permanent disabilities. The plaintiff argued that the medical resident who attended to her performed an unnecessary procedure to rupture her amniotic sac, that the procedure impeded the blood flow in Gabriel's umbilical cord, and that the defendant failed to deliver Gabriel via Cesarean section in time to prevent permanent damage. The defendant argued that the rupture procedure was necessary, that the baby's disability preexisted the procedure, and that Hospital doctors performed a Cesarean section soon after the rupture procedure. Each side presented expert trial testimony to support its position. Those experts based their opinions on

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medical records from the Hospital as well as from the University of Chicago and, during the expert testimony, without objection from either party, those medical records were described or read for the jury. The University of Chicago medical records described two medical examinations Gabriel underwent, at the ages of 10 months and 19 months. The records, according to the witnesses who read them in their testimony, stated that Gabriel experienced a developmental delay due to oxygen deprivation.

Throughout the trial, the trial judge periodically reminded jurors not to discuss the case during breaks in testimony. At one point during the trial, the jury sent the trial judge a note asking, " 'May a juror look up a definition of a term on their own.' " The trial judge answered the question as follows:

"Unfortunately I would have to prohibit that because it would require you looking \*\*\*, googling or going through a medical dictionary \*\*\* and that's not allowed.

\*\*\* So you're prohibited from finding out these things on your own."

After the close of evidence, the plaintiff offered the University of Chicago medical records into evidence. Over the defendant's foundational objection, the trial court admitted the records. The jury reached a verdict in the plaintiff's favor, and, within 30 days, the plaintiff filed an emergency motion for

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protective order asking that the court bar the parties from communicating with the jurors without leave of court. The motion recited that a juror had been contacted by someone purporting to be an investigator for the defendant and seeking an interview, which the juror did not want to give. The trial court entered an order indicating that the motion would be taken under advisement and barring the parties from communicating with the jurors until further court order.

The next day, the defendant filed a timely posttrial motion arguing, among other things, that the University of Chicago records were admitted with insufficient foundation and that the jury's deliberations had been tainted by external influences and pre-deliberation discussions. The defendant attached to its motion a typed document, titled "Statement of Jody Yeh-Shinbrood," bearing signatures for the names of Yeh-Shinbrood and two attorneys for the defendant. The statement recites that, Yeh-Shinbrood, a juror on the case, recalled that several jury members had admitted to conducting internet research on medical terminology despite the trial judge's instruction to avoid doing so. The statement further recites Yeh-Shinbrood's recollection that jurors discussed settlement amounts listed on the plaintiff's attorney's website, as well as her recollection that another juror, who was a nurse, began sharing opinions about the case with other jurors "immediately

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after opening statements." According to the statement, this juror "would comment on each plaintiff's witness, agreeing with the witness' testimony" but "for each defense witness \*\*\* would state [that the witness was] scripted and not truthful." The statement continued by describing many other statements the nurse juror made to other jurors to refute defense evidence, including the nurse's own interpretation of the reason the amniotic sac procedure was undertaken. The statement said that the nurse juror "continued to definitively contradict the evidence presented at trial with her own opinions, based on her supposed experience as a nurse." The statement further explained that jurors "started asking [the nurse] questions during the trial, in advance of deliberations, regarding medical facts and [the nurse] gave definitive answers to the jurors['] questions which were contrary to the testimony which was presented during the trial." The statement document was accompanied by an affidavit in which Yeh-Shinbrood swore that the statement was accurate and based on her personal knowledge. At the conclusion of its post-trial motion, the defendant asked that the jury's verdict be reversed, or that a new trial be ordered.

The trial court ordered a response to the defendant's post-trial motion, ordered the parties to advise one another of all juror contacts, left intact its prior order barring juror contact, and scheduled a hearing on the post-trial motion. To its response

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to the defendant's post-trial motion, the plaintiff attached a proposed bystander's report, prepared by the plaintiff's counsel, attesting that the parties had stipulated to the admission of the University of Chicago records. The defendant objected to the proposed bystander's report as being inaccurate.

After the defendant filed its objection to the bystander's report, but before the trial court ruled on the defendant's post-trial motion, the defendant filed a "Motion for a Post Trial Evidentiary Hearing" citing Yeh-Shinbrood's statement and praying that the court conduct an evidentiary hearing on the allegations of jury misconduct. The plaintiff moved to strike as untimely the defendant's motion for evidentiary hearing, but the trial court denied the motion to strike.

At the hearing on the defendant's post-trial motion, the trial court rejected the defendant's arguments regarding the University of Chicago medical records largely on the basis that the records were discussed during testimony with the acquiescence of both parties. As for the defendant's jury misconduct allegations, the trial court ruled as follows:

"I don't see anything in this affidavit, nor do I see anything specifically in the motion that gives rise to an occasion that I can look at that says what they did [a]ffected the deliberations of the case. And how a jury deliberates is 100

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percent absolutely privileged. \*\*\* I think perhaps we have a disgruntled juror that came forward \*\*\*. \*\*\* I question the genuineness of that juror's motivations particularly when I admonished these jurors every day that if there [were] discussions about the case, to please bring [them] to my attention.

Now, I think there is somewhat of a misconception out there \*\*\* that jurors cannot discuss the case with each other while the case is pending. \*\*\* The court[']s admonishments are an attempt to have the jurors not go out and discuss the case with [other people]. \*\*\* My job \*\*\* is to try to assure that they keep an open mind \*\*\*. \*\*\* And that's where I think this affidavit falls short. I do not see any outside evidence that, number one, would have affected the deliberations and the outcome. And most importantly, number two, that it, in fact, did. \*\*\* [I]f it didn't affect their deliberations, \*\*\* [it's] meaningless. It's almost as if but for the fact they didn't go out and do this, they would have decided the case a different way. \*\*\* It's been a long standing policy \*\*\* that the verdicts are not to be scrutinized by anyone down the road barring something wholly inappropriate, and I don't see that here."

The defendant now timely appeals.

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The defendant's first argument on appeal is that the trial court erred in admitting into evidence, and sending to the jury room, the University of Chicago medical records. According to the defendant, the plaintiff failed to lay the foundation necessary for the admission of those documents into evidence. *E.g., Jackson ex rel. Jackson v. Reed*, 402 Ill. App. 3d 215, 237, 935 N.E.2d 978 (2010) (medical records may be admitted as business records so long as proper foundation is laid); Ill. S. Ct. R. 236 (eff. Aug. 1, 1992).

The plaintiff does not dispute the defendant's assertion that no proper foundation was laid for the University of Chicago medical records. Instead, the plaintiff argues alternatively that the defendant stipulated to the admission of the records, that the defendant forfeited its foundation objection by failing to raise the objection in a timely manner, or that any error was harmless. We agree with the plaintiff that any error in admitting the records was harmless under the facts of this case.

A party is not entitled to an absolutely error-free trial, and, where it appears that an error did not affect the outcome of a trial, or where a reviewing court can determine from the record that the error has caused no harm, the reviewing court will not disturb the trial court's judgment. *Simmons v. Garces*, 198 Ill. 2d 541, 566-67, 763 N.E.2d 720 (2002). As the plaintiff points out in

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its briefs, and as the trial court noted, the records that the defendant argues should not have been admitted into evidence were read to the jury, without objection, during testimony from more than one expert. Accordingly, even if the trial court had not admitted the records into evidence (or allowed the jury access to them during deliberations), the jury still would have learned the contents of the records without any objection from the defendant. Thus, we cannot say that the formal admission of the records into evidence, or the ruling allowing the jury to see the records again, caused any harm to the defendant's case, and we reject its argument that the trial court's judgment should be reversed due to their admission.

The defendant's second argument on appeal is that the trial court erred in denying its request for an evidentiary hearing regarding jury misconduct. As a threshold matter, the plaintiff argues that the defendant forfeited any right to an evidentiary hearing by failing to request that relief in its initial postjudgment motion. However, after the defendant filed its request for an evidentiary hearing, the plaintiff asked the trial court to strike the request for failure to raise it in the original post-trial motion. By denying the motion to strike and reaching the merits of the defendant's request, the trial court implicitly deemed the defendant's request sufficiently timely and considered

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it as part of the defendant's post-trial motion. The plaintiff offers nothing to suggest that the trial court abused its discretion in this regard, and we therefore reject the plaintiff's position that the defendant somehow forfeited any request for an evidentiary hearing by bringing it separately from its original post-trial motion.

The plaintiff also asserts, as another threshold matter, that the defendant failed to properly raise its allegations of juror misconduct because it attached only a typed statement the defendant's counsel prepared after speaking with a juror. The plaintiff asserts that, by failing to obtain an affidavit from the juror herself, the defendant left itself with a document based entirely on hearsay from its counsel. We disagree. Although the substance of the former juror's allegations is reported in a typewritten document apparently prepared by the defendant's counsel, that document was accompanied by an affidavit, executed by the juror, verifying its contents. The record, therefore, conclusively refutes plaintiff's hearsay argument.

On the merits, the plaintiff most stridently asserts that restrictions on impeachment of jury verdicts dictated the trial court's denial of the defendant's jury misconduct claims. Outside the area of premature jury deliberation--a topic we set aside for the moment--"[t]he law in Illinois is clear" that "[j]uror

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testimony or affidavits will not be admitted to show the motive, method, or process by which the jury reached its verdict." *Redmond v. Socha*, 216 Ill. 2d 622, 636, 837 N.E.2d 883 (2005). This rule reflects a policy of protecting the finality of judgments and the privacy of jurors (*Redmond*, 216 Ill. 2d at 636) and a recognition that one juror's testimony is incompetent to elucidate the mental processes of other jurors (*People v. Holmes*, 69 Ill. 2d 507, 512, 372 N.E.2d 656 (1978) (quoting *State v. Kociolek*, 20 N.J.92, 99-100, 118 A.2d 812, 816 (1955))). See also *Government of the V.I. v. Gereau*, 523 F.3d 140, 148 (3d Cir. 1975) (listing the reasons for the rule as "(1) discouraging harassment of jurors by losing parties eager to have the verdict set aside; (2) encouraging free and open discussion among jurors; (3) reducing incentives for jury tampering; (4) promoting verdict finality; [and] (5) maintaining the viability of the jury as a judicial decision-making body").

The prohibition, however, is not absolute. Juror testimony and affidavits "may be offered as proof of the existence of extraneous influences on the jury." *Redmond*, 216 Ill. 2d at 636. Thus, jury verdicts may be impeached, for example, by evidence that a juror undertook a personal investigation into matters otherwise covered by the evidence (*Stallings* 342 Ill. App. 3d 676) or by evidence that jurors had communications with parties to be affected by the case (*Kelly v. HCI Heinz Construction Co.*, 282 Ill. App. 3d

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36, 668 N.E.2d 596 (1996)). Jury verdicts may not be impeached, on the other hand, by evidence of matters such as jurors' later repudiation of their verdict (*Redmond*, 216 Ill. 2d 622) or jurors' mistake or confusion about their verdict (*Chalmers v. City of Chicago*, 88 Ill. 2d 532, 431 N.E.2d 361 (1982)).

The parties dispute whether the allegations raised here relate to the jury's internal deliberative process, and thus may not be considered, or to extraneous influences, and thus may be considered. We conclude that the allegations fall within the latter category. The defendant presented a juror affidavit to establish that jurors consulted the plaintiff's attorney's website for the amounts of plaintiffs' attorney's previous verdicts, the Internet for medical definitions, and a nurse juror for medical opinions that contradicted those presented at trial. Each of these alleged actions introduced extraneous material--comparable verdicts from the website, medical definitions from the Internet, and medical opinions from a juror--into the jury's deliberations. Accordingly, these allegations all described extrinsic matters, unrelated to the jury's internal processes, whose effect on the jury could properly be considered to impeach the jury's verdict.

Of course, even if the defendant's allegations of extrinsic influence on the jury may be considered, the question remains whether those allegations entitle it to any relief. "Where a jury

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has been exposed to improper extraneous information, reversal of [its] verdict is not automatic." *People v. Willmer*, 396 Ill. App. 3d 175, 181, 919 N.E.2d 1035 (2009). "The party challenging the verdict must establish prejudice." *Willmer*, 396 Ill. App. 3d at 181. "Because it is impossible to prove whether extraneous information affected jurors' decisions, the courts do not require proof of actual prejudice when determining whether a jury verdict has been tainted." *Stallings v. Black and Decker (U.S.), Inc.*, 342 Ill. App. 3d 676, 681, 796 N.E.2d 143 (2003). Rather, Illinois case law indulges a "presumption of prejudice \*\*\* if the extraneous information bears on a crucial issue in the case and may have improperly influenced the verdict." *Stallings*, 342 Ill. App. 3d at 681; see also *Holmes*, 69 Ill. 2d at 519 (finding prejudicial error where extraneous information related to crucial evidence).

We have little difficulty saying that the alleged extrinsic influences on the jury here bore on crucial issues in the case. The defendant alleged that jurors consulted the Internet to define medical terms, that jurors discussed settlement amounts listed on the plaintiff's attorney's website, and that one juror in particular interjected her medical opinions to contradict those offered into evidence. Thus, in a case that turned on the resolution of conflicting medical testimony, the external influences to which the jury was allegedly exposed informed its

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consideration of medical issues, of the propriety of expert testimony central to each side's case, and to the amount of damages it should award. Further, if we take the defendant's allegations as true, these influences had a very strong impact on the jury's deliberation. The defendant alleged not only that several jurors were exposed to the influences, but that jurors relied on them to the point that they actually began affirmatively seeking out the opinions of the nurse who offered her own knowledge of the medical issues at play. Under these circumstances, we must conclude that, taken as true, the defendant's allegations are sufficient to raise the possibility that the jury's verdict was tainted by external influences. We therefore further conclude that the trial court erred in rejecting the defendant's allegations without an evidentiary hearing.

In so holding, we reject two additional contentions the plaintiff raises to argue that the defendant's allegations should have been rejected. First, the plaintiff asserts that the defendant's allegations regarding jury internet use were too vague to warrant further consideration. According to the plaintiff, without any indication of what specific terms jurors turned to the Internet to define, or what specific sources the jurors consulted, any evaluation of the defendant's allegations would be an exercise in "pure speculation." We disagree. To compel an evidentiary

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hearing on a post-trial allegation of jury misconduct, a party must produce "specific, detailed and nonconjectural evidence in support of [its] position" (internal quotations omitted) (*Willmer*, 396 Ill. App. 3d at 182), but "any doubt should be resolved in favor of granting the evidentiary hearing" (*People v. Witte*, 115 Ill. App. 3d 20, 30, 449 N.E.2d 966 (1983)). Although the plaintiff is correct that the defendant did not identify any specific medical terms or Internet sources in its motion and supporting materials, we agree with the defendant that the allegation that jurors researched medical terms carries with it the unavoidable inference that those medical terms pertained in some way to issues presented at trial. Because the medical issues were so pivotal in this case, extraneous information on any of those medical issues raised an impermissibly high risk of tainting the jury's decision-making process.

Second, the plaintiff contends that the nurse's interjection of her medical opinions into deliberations was proper, because jurors are allowed to evaluate evidence in light of their own knowledge and observations in the affairs of life. *E.g.*, *People v. Hopley*, 182 Ill. 2d 404, 465, 696 N.E.2d 313 (1998). This proposition derives from the well-worn notion that "it [is] proper for [a] jury to exercise their own judgment upon the facts in proof, by connecting them with their own knowledge and experience,

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which they are supposed to possess, in common with the generality of mankind." *City of Chicago v. Major*, 18 Ill. 349 (1857). However, the medical issues on which the trial experts opined, and regarding which the nurse purportedly offered her own opinions, were not matters within the general knowledge of mankind; they were disputed facts based on peculiar knowledge decidedly outside common knowledge and experience and beyond the ken of the average juror.

Although the decision is not precedential (see *Bryson v. News America Publications, Inc.*, 174 Ill.2d 77, 95, 672 N.E.2d 1207 (1996)), we find persuasive, and hereby adopt, the explanation set forth in *Sutter v. Massachusetts Bonding and Insurance Co.*, 215 Ill. App. 341, 345-46 (1919):

"It was the duty of the jury to weigh the conflicting medical testimony in the light of their knowledge and judgment derived from their experience, observation and reflection. [Citation.] They were presumed to make use of their common knowledge. They are supposed to represent the average intelligence of the community in which they live. \*\*\* Had any one of the twelve jurors special knowledge and education qualifying him as an expert witness, he should not have injected that special knowledge into the consideration and discussion of the case with his fellow jurors. [Citations.] It is not a scientific question settled like the law of gravity, of which the court

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takes judicial notice. So far as this record discloses, it is one of dispute among apparently qualified experts. The subject of disease, its cause and remedy, is one on which intelligent men radically differ. Any judge may have positive convictions on questions so arising, but even were he qualified to testify as an expert, we suppose it would be his duty in passing on the evidence in any given case on a motion for a new trial to accept the verdict of the jury if he believed it was not manifestly against the weight of the evidence, when considered by men possessing only the common experience and knowledge of mankind."

The nurse's alleged interjection of her medical opinions, to contradict the opinions of experts called to testify at trial, went beyond invocation of the common experience jurors are presumed to take into account as they discharge their service. If the defendant's allegations are true, the nurse's medical opinions constituted crucial extrinsic evidence that should not have been presented to the jury outside the evidentiary trial process. Its purported introduction to the jury, like the introduction of other settlement amounts and of Internet research on medical issues, would have tainted the jury's deliberations to the point that the jury's verdict could not be considered fair. Consequently, we agree with the defendant that, if the nurse's opinions were

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presented to the jury, then their influence, combined with the influence of improper Internet medical research and possible settlement amounts, would have tainted the jury's verdict, and we conclude that an evidentiary hearing was required to resolve those issues.

The above discussion disposes of the issues surrounding the defendant's allegations of extrinsic influence on the jury. However, we have yet to discuss the defendant's allegation that the jury engaged in improper premature deliberation. Such "questions of possible intra-jury influence or misconduct are treated differently from contamination by external influences." *People v. Runge*, 234 Ill. 2d 68, 103, 917 N.E.2d 940 (2009). Despite the seemingly bright-line rule barring consideration of any type of internal jury conduct to impeach a jury's verdict, the case law, perhaps relying implicitly on the notion that premature deliberation is extrinsic to the legitimate deliberative process, allows inquiry into the possibility that jury pre-deliberation biased the jury's later actual deliberation. Accordingly, in *Runge*, after citing case law indicating that matters internal to jury deliberations cannot impeach a jury verdict (*Runge*, 234 Ill. 2d at 103 (citing *United States v. Lakhani*, 480 F.3d 171, 184-85 (3d Cir. 2007))), the supreme court offered a lengthy discussion of the circumstances under which premature deliberation might

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invalidate a verdict.

As the supreme court explained in *Runge*, "as a rule, it is improper for jurors to discuss among themselves the case or any subject connected with the trial until all of the evidence has been submitted to them after final instructions by the trial court." (Internal quotations omitted.) *Runge*, 234 Ill. 2d at 128 (quoting *People v. Cloutier*, 178 Ill. 2d 141, 160-61, 687 N.E.2d 930 (1997)). However, premature jury deliberation, " 'though not necessarily proper, is not as serious as [the exertion of external influences on a jury], nor does "every incident of juror misconduct require[] a new trial." [Citation.] What is crucial is "not that jurors keep silent with each other about the case but that each juror keep an open mind until the case has been submitted to the jury. [Citation.]' " *Runge*, 234 Ill. 2d at 125 (quoting *Davis v. Woodford*, 384 F.3d 628, 653 (9th Cir. 2004) (quoting *United States v. Klee*, 494 F.2d 394, 396 (9th Cir. 1974))). "[T]he test for reversibility is whether the [improper deliberation] has prejudiced the defendant to the extent that he has been denied a fair trial. The important question in this regard is not whether the jurors kept silent with each other about the case, but whether each juror kept an open mind until the case was submitted to them." *Runge*, 234 Ill. 2d at 128 (quoting *Cloutier*, 178 Ill. 2d at 160-61).

Here, the defendant has not only alleged that the jury

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conducted premature deliberations, but has also described how those early deliberations were biased against it. In addition, the defendant has alleged that the premature deliberations impacted, and were relied on by, several jurors. If these allegations are true, then they could establish that the jury was biased by the time it began its legitimate deliberations and thus did not afford the defendant a fair hearing. Accordingly, as with the allegations of improper extrinsic jury influence, the trial court should allow the defendant an evidentiary hearing to explore the effect that any premature deliberation might have had on the jury's ability to render an unbiased verdict.

For the foregoing reasons, we hold that the trial court erred in rejecting the defendant's request for an evidentiary hearing regarding jury misconduct. Accordingly, we retain jurisdiction over this cause but remand it to the trial court for an evidentiary hearing regarding the defendant's allegations, to determine if a new trial is necessary. See *Kuntu*, 188 Ill. 2d at 162 (remanding for evidentiary hearing on jury misconduct but retaining jurisdiction pursuant to supreme court's supervisory authority); *In re Ch. W.*, 399 Ill. App. 3d 825, 830 927 N.E.2d 872 (2010) (remanding for hearing but retaining jurisdiction pursuant to Rule 366(a)(5) (eff. Feb. 1, 1994) and the principle that an appellate court does not lose jurisdiction until the parties' rights to

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appeal have been exhausted). After the trial court's ruling, the parties should move to supplement the record on appeal with the evidentiary hearing proceedings, and they should either: (1) request a supplemental briefing schedule for any challenges to the trial court's ruling on remand, or (2) indicate their intention not to challenge the trial court's ruling on remand and request that this appeal be dismissed.

Remanded with directions; jurisdiction retained.