2011 IL App (2d) 101256-U
No. 2-10-1256
Order filed December 8, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

RAY WILLAS,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 06-L-04
	)	
	)	
DAVID L. ANDERSON and DOUBLE D DISTRIBUTORS, INC.	)	
	)	
	)	
Defendants/Third-Party Plaintiffs-Appellees	)	
	)	Honorable
	)	Steven Sullivan,
(Metro Security, Third-Party Defendant).	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: Where a jury returned a verdict for defendants in a personal injury action involving a low speed traffic collision, the trial court did not err in (1) denying plaintiff a directed verdict and judgment notwithstanding the verdict; (2) allowing defense counsel to ask plaintiff's expert a hypothetical question regarding plaintiff's pre-existing knee condition; and (3) allowing defendants' expert to testify about the extent of plaintiff's knee injury.

¶ 1 Plaintiff, Ray Willas, filed a personal injury action for negligence against defendant Double D Distributors, Inc., and its employee David L. Anderson. While behind the wheel of a large flatbed truck owned by Double D Distributors, Anderson backed into the front of a Ford Explorer driven by Willas, who was 72 years old at the time. Willas claimed the collision caused serious injuries to his right knee, which eventually required knee-replacement surgery. Defendants argued that Willas suffered from arthritis in his knee before the collision and that the knee replacement surgery was inevitable, regardless of whether the collision occurred. A jury returned a verdict for defendants, and Willas appeals.

¶ 2 On appeal, Willas argues that the judgment for defendants must be reversed and that the trial court erred in denying him a directed verdict and judgment *n.o.v.* on the issue of liability. Alternatively, Willas argues that he is entitled to a new trial because the trial court erroneously (1) allowed defense counsel to cross-examine Willas' physician about whether Willas would have needed knee-replacement surgery if he had not been in the accident and (2) allowed defendants' medical expert to give an opinion about the knee that allegedly had not been disclosed before trial. We affirm.

¶ 3 I. FACTS

¶ 4 A. The Collision

¶ 5 On January 20, 2004, Anderson picked up construction materials from a Menards store in Carpentersville. Anderson drove a 20-foot-long flatbed truck which contained the materials and a forklift secured at the end. The forklift stuck out nine feet from the end of the flatbed. The forklift weighed 13,000 pounds and had two tires in the front and one in the rear. The lowest, most rear point of Anderson's load was the forklift's rear tire, which was in a raised position.

¶ 6 Before leaving Menards, Anderson waited in the truck a few minutes for a payload inspection by an employee of third-party defendant Metro Security, who is not a party to this appeal. Anderson's truck was stopped near the "out" sign at the gate. After inspecting Anderson's documentation, the guard told Anderson that the truck had been loaded incorrectly. Anderson testified that he asked if he could pass through the gate, turn around, and drive back; but the guard told him to back up instead.

¶ 7 Anderson testified that he asked the guard if it was clear to back up. Anderson believed the guard had a better vantage point because she was outside the truck and looking toward the rear. Anderson testified that he started the truck, checked his mirrors, pushed in the parking brake, put the truck in reverse, and released the clutch. Before Anderson touched the accelerator, the truck rolled a very short distance at one to two miles per hour, and Anderson felt resistance almost immediately. The forklift had made contact with the front of Willas' Ford Explorer. According to Anderson, his truck had a blind spot in the rear that would have prevented him from seeing the Explorer if it was within 10 feet of the end of the forklift.

¶ 8 Anderson pushed in the clutch, stopped the truck, and pulled the parking brake. He looked in the rearview mirror and could see that the forklift's rear tire still was in the raised position. Anderson exited the truck and saw the dented hood and cracked grill on the Explorer. The rear tire of the forklift had pressed down on the hood. Anderson admitted that the Explorer was too close for him to see with the truck's mirrors. Anderson also admitted that, if he had walked halfway down the back of his truck and craned his neck, he could have seen the rear of the Explorer; and nothing prevented him from doing so. However, Anderson described the collision as extremely light, like making contact with a parking space stopper. Neither Anderson's truck nor the forklift suffered any

damage. Anderson testified that, after the collision, Willas grabbed a cane, opened the door to the Explorer, and said "You hit me, and I'm going to sue you."

¶ 9 Anderson testified that he did not know whether the guard actually looked behind his truck before saying it was okay to back up. When Anderson spoke with the guard, she was three to four feet from the truck and right behind the cab on the driver's side. Anderson did not know what the guard could see when he asked her if he could back up.

¶ 10 Willas testified that, on the date of the collision, he drove his Explorer to the Menards security area labeled "out," where defendants' flatbed truck was in line ahead of him. Willas pulled up seven to eight feet behind the rear most portion of the flatbed with the forklift on the end. The rear most portion of the forklift was just above the Explorer's hood.

¶ 11 Willas testified that he was stopped for three to four minutes reviewing billing slips and preparing them for the guard. Willas was sitting on an angle so that he was not centered under the steering wheel post. Without warning, the truck backed into the Explorer. Willas' right knee struck the lower portion of the dashboard. At first he felt shock, but he felt pain a couple minutes later. Willas told the investigating police officer that he felt knee discomfort or pain, but he declined an ambulance. Willas testified that, before the collision, he had suffered no knee pain that day.

¶ 12 Willas testified that the day after the collision, he went to Sherman Hospital and was referred to a specialist. Willas complained of "pretty constant pain," and the specialist suggested that he see Dr. John Hefferon, who had been Willas' treating physician as far back as 1988, when he treated Willas for shoulder pain.

¶ 13 Dr. Hefferon testified that he was an orthopedic surgeon and that two-thirds of his practice involves the treatment of knees. At trial, Dr. Hefferon commented on the records of Dr. Herbstman,

who had seen Willas a couple days after the accident. Dr. Herbstman diagnosed a contusion, which is a bruise or bump, on the right knee. Willas had slight puffiness or swelling, with an impression of a contusion, which is caused by a direct blow to the body. Dr. Herbstman did not just see a superficial contusion because there was a significant loss of range of motion to the knee.

¶ 14 Dr. Hefferon saw Willas on April 2, 2004, after learning of the January 20, 2004, collision. Willas reported that he had jammed his right knee against the dashboard of his vehicle. Willas told Dr. Hefferon that he had been doing quite well with the right knee before the incident and that x-rays had suggested a patella, or kneecap, injury. Willas' Vioxx prescription dosage was doubled and physical therapy was prescribed.

¶ 15 Dr. Hefferon began administering cortisone injections periodically from May 2004 through November 2006. Willas would do well after each injection, but as they wore off, he would return for another injection.

¶ 16 On January 8, 2008, Dr. Hefferon performed full knee replacement surgery on Willas. The surgery gave Willas relief, and he was prescribed physical therapy and had follow-up visits through December 5, 2008.

¶ 17 Dr. Hefferon opined that, although Willas had pre-existing arthritis, he believed that the collision caused Willas to suffer damage to the anterior compartment of the knee, to the joint surface of the patella, right under the kneecap in front of the knee. Dr. Hefferon's opinion was based on the history of the injury and the worsening of the knee after the collision. Dr. Hefferon believed the articular surface of the kneecap was injured in the collision, but he questioned whether the patella had been fractured. To a reasonable degree of medical certainty, Dr. Hefferon opined that the collision caused: (1) injury in the form of trauma to the anterior part of the knee in the patella area;

(2) a contusion to the patella and the articular surface under the patella; and (3) a precipitation in the need for the total knee replacement surgery. Dr. Hefferon also described Willas' medical expenses and testified that they amounted to $74,600.

¶ 18 B. Medical History

¶ 19 Dr. Hefferon testified that he saw Willas to begin treatment of right knee pain on May 8, 2002, which was more than 1½ years before the incident. In May 2002, Willas underwent arthroscopy of the right knee for a meniscus tear. On July 29, 2002, Dr. Hefferon followed up with Willas, who was doing quite well but suffered occasional medial, or inner-side, knee pain.

¶ 20 Records from Hines VA Hospital (Hines VA) from January 31, 2003, show a history of the 2002 knee arthroscopy and increased right knee pain occurring during the prior two months. Willas reported that, since the arthroscopy, his knee never had felt quite right. Willas had some progressive knee arthritis and complained of right knee clicking. He was taking Vioxx, a nonsteroidal anti-inflammatory drug for arthritis, but he declined intervention at that time. Dr. Hefferon testified that, since the first surgery had not improved the knee, there certainly was a likelihood that knee replacement surgery would be necessary if the arthritis continued to progress. On April 23, 2003, Dr. Hefferon saw Willas for a strained Achilles tendon injury, and Willas also complained of his right knee due to osteoarthritis.

¶ 21 Records from Hines VA on May 20, 2003, show Willas was suffering from some osteoarthritis of the knee, which caused pain. Willas still was taking Vioxx. An x-ray of the knee showed severe narrowing of the medial femorotibial joint space, mild articular bone spur formation in the patella, minimal to mild articular marginal bone spur formation of the femorotibial condyles, and a three millimeter calcific nodular density. The assessment was that Willas had degenerative

arthritis of the right knee, which meant that he had osteoarthritis in the knee. The treating physician had concluded Willas' knee symptoms were caused by the osteoarthritis. .

¶ 22 Dr. Hefferon described the condition being in three parts of the knee, with the most significant finding on x-ray being the severe narrowing of the medial joint space. There also was some spurring in the kneecap that is generally indicative of osteoarthritis. The spurs can be painful. The spurring is also an indication that a knee replacement would be required as the disease process continued.

¶ 23 Records from Hines VA on May 28, 2003, show that Willas was there for his left Achilles, but also had exhibited unbearable, chronic right knee pain that he rated an 8 on a scale of 1 to 10. Willas went up or down 14 steps about 10 times daily, and he used an exercise bike and did yard work. Willas took Vioxx, which relieved the pain, but did not cure the problem with the knee anatomy.

¶ 24 Records from Hines VA on June 23, 2003, show Willas sought treatment for his heel and also complained of right knee pain, with no note of the degree of pain. Records from Hines VA on July 21, 2003, show complaints of chronic right knee pain, with a note that therapy was not helping much. Accordingly, the diagnosis was that Willas would need more aggressive treatment.

¶ 25 According to Dr. Hefferon, the significant pain and ineffectiveness of physical therapy meant that Willas had significant arthritis. The therapy was prescribed to strengthen the muscles around the knee to hold it in place and keep it from shifting and causing more arthritis. The ineffectiveness of the therapy put Willas further along in the treatment regimen and made more aggressive treatments necessary.

¶ 26 Records from Hines VA on September 5, 2003, show that weight bearing caused Willas right knee pain that improved with rest. An x-ray showed degenerative arthritis with medial joint space narrowing. Willas was taking Vioxx primarily for the left heel tendonitis with limited relief to the right knee. Willas also denied a history of trauma or swelling to the right knee. The doctor at Hines VA presented Willas with the option of cortisone injections, which is more potent that Vioxx in terms of anti-inflammation and pain relief, but Willas declined. The physicians at Hines VA believed there was no indication for surgery at that time.

¶ 27 According to Dr. Hefferon, the next step after cortisone injections to relieve Willas' pain would be knee replacement surgery. He added that, if cortisone injections did not work, there would be no choice but for the patient to undergo knee replacement.

¶ 28 Records from Hines VA on October 21, 2003, show Willas sought treatment for his left Achilles tendonitis and a blood pressure check. Willas had no right knee complaints and reported being able to walk two hours before needing to rest. Willas reported that he was active with a new house and a new puppy.

¶ 29 Records from Hines VA on November 12, 2003, show a visit for Achilles tendonitis. Although Willas was taking Vioxx for both knees, he had no specific complaints of pain at that time. Willas' degenerative arthritis was continuing, bone spurs were continuing to form, and there was narrowing and problems in the knee joint. Dr. Hefferon admitted that this meant that Willas was having significant problems with the right knee and that he might need a knee replacement in the future.

¶ 30 Over Willas' objection, defense counsel was allowed to ask Dr. Hefferon a hypothetical question about whether his diagnosis would be different if the doctor had not known of the collision.

Dr. Hefferon testified that, assuming that Willas had not told him of the January 20, 2004, incident and that he only reviewed the Hines VA records and examined the patient as he had after the incident, his diagnosis would be that Willas suffered from pre-existing degenerative disease in the right knee with spurring causing pain symptoms.

¶ 31 Dr. Hefferon further agreed that, if everything in the medical records was exactly the same but the incident was omitted, then Willas' need for right knee replacement would have been solely the result of the pre-existing degenerative condition that had progressed to the point of requiring surgery. In such case, Dr. Hefferon's care and treatment of Willas would have been exactly the same, and the result would have been the same.

¶ 32 Dr. Hefferon noted there was nothing in Willas' x-rays after the accident that showed a right knee injury. There had been nothing about the doctor's examination findings that would advise what role, if any, the motor vehicle accident had played. Dr. Hefferon further agreed that his opinions were based on what Willas told him, and the accuracy of the history given by Willas and that if the history was not incomplete or inaccurate, it could affect the accuracy of his opinions regarding causation of the injury.

¶ 33 When Dr. Hefferon had seen Willas in April 2003, Willas had continued complaints of right knee pain due to his degenerative arthritic condition that was likely to worsen. Willas would continue to experience those symptoms for the rest of his life absent surgical or medicinal intervention. In other words, the problems were not going to go away.

¶ 34 C. Defendants' Expert

¶ 35 Dr. Dobozi, defendants' expert, testified that he is a retired board-certified orthopedic surgeon who had worked at Loyal University Medical School and Hines VA. He had been a

professor of orthopedics and chief of the largest level-one trauma center in Illinois. Dr. Dobozi had performed numerous knee replacement procedures. He reviewed all of Willas' medical records, certain x-rays, and Dr. Hefferon's medical opinions.

¶ 36 Dr. Dobozi opined that Willas had a pre-accident history of arthritis in his shoulder and back, and the doctor described two types of arthritis, including a "wear-and-tear" type that he observed in Willas. Dr. Dobozi opined that, as a progressive disease, arthritis gets worse with time and joints wear away, leading to inflammation, swelling, and pain. When the deterioration reaches bone-on-bone, the nerve fibers in the area are irritated and the patient experiences more pain. Dr. Dobozi described the three compartments of the knee joint and the knee's anatomy, and he explained how arthritis attacks the knee joint and progresses over time.

¶ 37 Dr. Dobozi opined that, since Willas had pre-accident medial meniscus surgery, the small cartilage spacer or disc had been removed, so Willas was walking on the actual joint surface and had walked bowlegged since the cushion had been cut out. This led to more stress on the inside of the joint. Considering that the medial meniscus surgery had been performed in 2002, Dr. Dobozi anticipated that within a couple years the arthritis would progress to bone-on-bone.

¶ 38 Dr. Dobozi opined that, once the cartilage cushion was removed, the patient is walking on the joint surface causing it to wear and the joint to break down with little chips eaten up by the joint surface causing pain. This is a guarantee for progressive arthritis.

¶ 39 Like Dr. Hefferon, Dr. Dobozi commented on Willas' visits to Hines VA for knee treatment. Dr. Dobozi opined that the arthritic disease process waxes and wanes in symptoms. Willas was having severe knee problems with bone spurs one year after his previous surgery and was getting

close to bone-on-bone. Dr. Dobozi described the pre-accident visits to Hines VA and explained the further deterioration of the knee joint.

¶ 40 Based on Willas' medical history, Dr. Dobozi opined that, as of September 2003, Willas was a candidate for a right knee replacement. As of November 12, 2003, Willas still was taking Vioxx for knee pain that ranged from five to nine on the pain scale. Dr. Dobozi showed the jury Willas' x-ray of May 20, 2003, and explained that it revealed that one year after the 2002 surgery, Willas had lost 80% of his joint surface. The anatomy had changed so that Willas began shifting his weight to one side of his knee when he walked.

¶ 41 Dr. Dobozi opined that, two years after the 2002 surgery, Willas had two compartments that were possibly arthritic, and 95% to 98% of the surface was bone-on-bone, and as expected, the condition was going to worsen over time. According to Dr. Dobozi, when Dr. Herbstman saw Willas two days after the January 2004 incident, Willas advised that he had been previously told that he suffered from arthritis and eventually might need a knee replacement. From the records of Willas' visit with Dr. Herbstman, Dr. Dobozi deduced that the collision did not cause injury to Willas's right knee.

¶ 42 Dr. Dobozi disagreed with Dr. Hefferon's reading of the x-rays. Dr. Dobozi did not see any damage that could have occurred in the incident, considering that two years after the 2002 surgery, the knee already was bone-on-bone, which Dr. Dobozi expected, considering the arthritis seen during the arthroscopy in 2002. Further, the knee replacement was performed four years after the January 2004 incident.

¶ 43 According to Dr. Dobozi, the incident did not have anything to do with the progression of the arthritis or the knee replacement four years later. He specifically opined that the knee replacement was not in any way related to the accident.

¶ 44 During cross-examination by Willas' counsel, for the first time the expert report written by Dr. Dobozi was mentioned. Willas' counsel asked Dr. Dobozi where in his report it said anything about whether the articular surface of the knee or the kneecap was not aggravated or damaged by the accident. Dr. Dobozi answered "[i]t just says on page four, it is my opinion that Mr. Willas sustained no injury to his right patella, the kneecap, or his right knee in the accident of January 20, 2004, and then I went on to give my reasons why I said that."

¶ 45 Over plaintiff's objection, Dr. Dobozi was allowed to testify that he disagreed with Dr. Hefferon's opinion that the collision caused an injury underneath the kneecap that led to knee surgery. Dr. Dobozi also opined, over plaintiff's objection, that there was no indication in the records of an injury to the undersurface of the patella in the collision. Dr. Dobozi testified there was nothing in the exams or x-rays showing injury to the backside of the kneecap. He emphasized that there was no fracture in the kneecap.

¶ 46 Dr. Dobozi admitted that, from September 5, 2003, to the date of the collision, there was no record of Willas complaining to any physician about right knee pain. Dr. Dobozi admitted that Hines VA records showed that Willas was examined on September 22, 2003, with no knee complaints or knee effusion after walking 2½ hours the day before.

¶ 47 Dr. Dobozi admitted that the tenderness in the knee seen at Sherman Family Health Systems on the day after the collision could be from either the collision or arthritis. Dr. Dobozi admitted that

the complaints and right knee swelling observed by Dr. Herbstman on January 22, 2004, could be pain and injury caused by the collision.

¶ 48 II. ANALYSIS

¶ 49 A. Completeness of the Record

¶ 50 Initially, we address defendants' contention that the judgment must be affirmed on the ground that Willas has failed to supply this court with an adequate record. Specifically, defendants point out that the record does not contain the security guard's testimony, Willas' testimony on cross-examination, or reports of proceedings from the hearings on his posttrial motions. Under *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error; and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court conformed with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92.

¶ 51 Willas does not explain why the reports of proceedings are not available, but regardless of the reason, Willas could have remedied the circumstance easily. In this court, Willas could have filed a bystanders report under Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) or an agreed statement of facts under Rule 323(d) (Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005)). Either could have provided the reasons for the trial court's ruling.

¶ 52 Doubts that arise from the incompleteness of the record will be resolved against the appellant (*Foutch*, 99 Ill. 2d at 392), and in this case, the record does not contain certain portions of trial testimony or the court's reasons for denying posttrial relief. Our review is not hindered to the degree that we must affirm the judgment without considering the parties' arguments, but we account for the

incompleteness of the record in the context of each of the following issues that Willas raises on appeal.

¶ 53 B. Sufficiency of the Evidence

¶ 54 Willas argues that the trial court erred by failing to grant him a directed verdict or a judgment notwithstanding the verdict (judgment *n.o.v.*) based on the evidence he presented to prove the proximate-causation element of the negligence claim. A motion for a directed verdict is reviewed in the same way as a motion for a judgment *n.o.v.* *Evans v. Shannon*, 201 Ill.2d 424, 427 (2002). "A judgment *n.o.v.* should be granted only when 'all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors [a] movant that no contrary verdict based on that evidence could ever stand.' " *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006) (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). A reviewing court "cannot reweigh the evidence and set aside a verdict because different conclusions could have been drawn." *Dukes v. Pneumo Abex Corp.*, 386 Ill. App. 3d 425, 444 (2008). Because the standard for entering a directed verdict or a judgment *n.o.v.* is a high one (*Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 106 (2006)), such a judgment is inappropriate if "reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented" (*Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 351 (1995)). A trial court's decision denying a motion for judgment *n.o.v.* is reviewed *de novo*. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 100 (2010).

¶ 55 Defendants contend that the denial of judgment *n.o.v.* must be affirmed because Willas failed to present a sufficient record of the hearings on his motions, but our review of the issue is *de novo*, such that we need not defer to the trial court's reasons for its ruling. Nevertheless, we agree with

defendants that Willas' argument fails on the merits, especially in light of the portions of testimony that are missing from the record.

¶ 56 Willas argues that, because defendants admitted that Anderson caused the collision, the trial court erred in denying Willas a directed verdict or judgment *n.o.v.* on the issue of liability. Even if the facts showed that Anderson breached his duty to keep a proper lookout and refrain from backing into Willas' vehicle, Willas still had to show that the breach was the proximate cause of his injury.

¶ 57 The proximate-cause element consists of two separate requirements: cause in fact and legal cause. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 395 (2004). Cause in fact exists " 'when there is a reasonable certainty that a defendant's acts caused the injury or damage.' " *City of Chicago*, 213 Ill. 2d at 395 (quoting *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 455 (1992)). In deciding whether the plaintiff has proved the element of proximate cause, courts first address "whether the injury would have occurred absent the defendant's conduct." *City of Chicago*, 213 Ill. 2d at 395. Additionally, when multiple factors may have combined to cause the injury, we must consider whether the "defendant's conduct was a material element and a substantial factor in bringing about the injury." *City of Chicago*, 213 Ill. 2d at 395. As to legal cause, we assess foreseeability and consider "whether the injury is of a type that a reasonable person would see as a likely result of his conduct." *City of Chicago*, 213 Ill. 2d at 395.

¶ 58 Dr. Dobozi testified that, in his expert opinion to a reasonable degree of medical certainty, Willas suffered no injury as a result of the collision and that the knee replacement surgery was required because Willas had a long history of progressive arthritis that was unrelated to the collision. The jury, as the finder of fact, was free to credit Dr. Dobozi's testimony and conclude that the injury requiring knee replacement surgery would have occurred absent Anderson's conduct. By returning

a verdict for defendants, the jury implicitly found that Anderson's conduct in causing the collision was not the proximate cause of Willas' knee problems that ultimately required knee replacement surgery, and we will not reweigh the evidence on appeal. The jury's verdict is not against the manifest weight of the evidence. Under these circumstances, reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented such that a directed verdict or a judgment *n.o.v.* for Willas would have been inappropriate. See *Pasquale*, 166 Ill. 2d at 351.

¶ 59 B. Hypothetical Question

¶ 60 Next, Willas argues that the trial court committed reversible error when it allowed defense counsel to ask Dr. Hefferon, Willas' medical expert, about how the diagnosis, care, and treatment of Willas' knee would have been different if Willas had not been in the accident. Dr. Hefferon testified that, if Willas had not been in the collision, the care and treatment would have been exactly the same because Willas' pre-existing knee condition eventually would have required knee replacement surgery.

¶ 61 A party is not entitled to present his theory of the case through cross-examination, but hypothetical questions are permissible cross-examination. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 96 (1995)); *Lisowski v. MacNeal Memorial Hospital Association*, 381 Ill. App. 3d 275, 287 (2008). The cross-examining party may use facts in evidence that conform to his theory of the case. *Leonardi*, 168 Ill. 2d at 96. "It is within the sound discretion of the trial court to allow a hypothetical question, although the supporting evidence has not already been adduced, if the interrogating counsel gives assurance it will be produced and connected later." *Leonardi*, 168 Ill. 2d at 96. "Evidence admitted upon an assurance that it will later be connected up should be excluded upon failure to establish the connection." *Leonardi*, 168 Ill. 2d at 96.

¶ 62 The assumptions in a hypothetical question are proper as long as they are within the realm of direct or circumstantial evidence or are reasonable inferences from the established facts. *Granberry v. Carbondale Clinic, S.C.*, 285 Ill. App. 3d 54, 59 (1996). Moreover, the facts suggested in hypothetical questions need not be undisputed but need only be supported by the record, and in presenting evidence by a hypothetical question, counsel propounding the question has a right to ask it, assuming only the facts as he perceives them to be shown by the evidence. *Granberry*, 285 Ill. App. 3d at 59. Opposing counsel may then challenge the controverted facts by presenting his own hypothetical questions to the witness. *Granberry*, 285 Ill. App. 3d at 59. Facts, data, or opinions supported by the evidence may be varied in questions asked on cross-examination designed to develop a potentially different opinion of the expert than would prevail if the trier of fact believed a contrary version of disputed facts. *Granberry*, 285 Ill. App. 3d at 59.

¶ 63 Willas argues that allowing the hypothetical question to be asked and answered is reversible error because the question omitted the uncontested fact that Willas was involved in the collision. The hypothetical question was designed to establish through Willas' expert's own testimony that the right knee suffered from a preexisting injury that would have required full knee-replacement surgery regardless of whether the collision occurred. Defense counsel omitted the collision from the hypothetical to focus the jury's attention on the defense theory that all of Willas' right knee problems were caused by a pre-existing condition and not by a low speed vehicle collision. Thus, the hypothetical was designed to develop a different opinion of Dr. Hefferon based on the possibility that Willas was not injured in the collision, which was a disputed fact. A hypothetical question is proper if it is based on a reasonable inference from facts in the record, and in this case, Willas' pre-existing knee condition was a well-established fact. Considering that the evidence created at least a

reasonable inference that Willas' knee problems after the accident had nothing to do with the collision, we conclude that the trial court did not abuse its discretion in allowing the hypothetical question.

¶ 64 C. Disclosure of Expert Opinion

¶ 65 Finally, we address Willas' contention that he was prejudiced when the trial court permitted Dr. Dobozi to testify that the collision had not caused an injury to the underside of Willas' kneecap. Willas objected at trial and argues on appeal that defendants had not disclosed Dr. Dobozi's opinion regarding the kneecap before trial as required by Illinois Supreme Court Rule 213. Ill. S. Ct. R. 213 (eff. Jan.1, 2007).

¶ 66 According to Rule 213(g), an expert's opinions at trial are limited to the disclosures provided in a Rule 213(f) interrogatory or during a discovery deposition. Ill. S. Ct. R. 213 (eff. Jan.1, 2007). Information in an "evidence deposition not previously disclosed in a Rule 213(f) interrogatory answer or in a discovery deposition shall not be admissible upon objection at trial." Ill. S. Ct. R. 213 (eff. Jan.1, 2007). An expert witness may expand upon a disclosed opinion provided that the testimony states a logical corollary to the disclosed opinion and not a new basis for the opinion. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 37 (2010).

¶ 67 In this case, Dr. Dobozi disclosed his opinion before trial that "[i]t is my opinion that Mr. Willas sustained no injury to his right patella or right knee in this accident of January 20, 2004." By testifying at trial that the collision did not cause an injury underneath Willas' kneecap, Dr. Dobozi was expanding upon his disclosed opinion that the kneecap was not injured in the collision. The testimony states a logical corollary to the disclosed opinion and not a new basis for the opinion. We conclude that the testimony of Dr. Dobozi regarding injury to Willas' kneecap complied with the

requirements of Rule 213 and that the trial court did not abuse its discretion in allowing the testimony.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, the judgment entered for defendants in the circuit court of Kane County is affirmed.

¶ 70 Affirmed.