

¶ 3

BACKGROUND

¶ 4 On Saturday, April 22, 2000, at approximately 12:30 a.m., the plaintiff brought 17-month-old Darrell to the emergency room at St. Elizabeth's Hospital in Belleville. Darrell had a rash and an extremely high fever, and the plaintiff reported that he had been vomiting and acting lethargic. As the attending emergency room physician, the defendant periodically monitored and treated Darrell for several hours before he stopped breathing and was pronounced dead at approximately 3:45 a.m. An autopsy followed, and the cause of death was listed as "sepsis with *Neisseria meningitidis* resulting in the Waterhouse-Friederichsen syndrome," a condition "where the adrenal glands hemorrhage or become destroyed as a result of the infection in the blood."

¶ 5 At trial, the plaintiff's expert, Dr. Marc Weber, testified that having reviewed the records documenting the defendant's treatment of Darrell, he was of the opinion that the defendant had "deviated from generally accepted standards of practice in failing to diagnose the presence of a serious or significant bacterial infection." Weber indicated that the defendant should have identified Darrell's bacterial infection sooner than she did and that Darrell should have immediately been given intravenous fluids and antibiotics. The defendant's failure to provide proper treatment, Weber opined, decreased Darrell's chance of survival and was a proximate cause of his death.

¶ 6 When cross-examined, Weber acknowledged that Darrell's bacterial infection had progressed very rapidly and that Darrell had exhibited "flu-like symptoms" when he arrived at the emergency room. Weber further acknowledged that the defendant had not been advised that laboratory tests had revealed the presence of *Neisseria meningitidis* in Darrell's bloodstream until 2:45 a.m. When asked whether giving Darrell antibiotics the moment he entered the hospital would have "made any difference in the outcome," Weber stated that he "couldn't say [it was] more likely than not that it would have made any difference." Weber

also agreed that even if Darrell had been promptly treated with antibiotics, his chance of survival was still "very small."

¶ 7 The record indicates that the defendant rebutted Weber's expert opinions through the testimony of Dr. Jeffrey Graff and Dr. Gregory Storch. The record further indicates that both doctors opined that the defendant's treatment of Darrell had not deviated from the acceptable standard of care; that even if Darrell's infection had been discovered sooner, it would have still proven fatal; and that there was no lost chance of survival under the circumstances. It appears that the plaintiff and the defendant both testified and gave varying versions of what had occurred in the emergency room before and after Darrell's death.

¶ 8 At the jury instruction conference, for the issue of proximate cause, the plaintiff tendered the following modified version of the long form of Illinois Pattern Jury Instructions, Civil, No. 15.01 (2006) (hereinafter IPI Civil (2006) No. 15.01) (modification emphasized):

"When I use the expression 'proximate cause,' I mean any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

Proximate cause may be established by proving or showing that Defendant's conduct increased the risk of harm to the Plaintiff or lessened the effectiveness of the Plaintiff's treatment."

The defendant objected to this instruction, citing *Sinclair v. Berlin*, 325 Ill. App. 3d 458 (2001), *appeal denied*, 198 Ill. 2d 608 (2002). The defendant asserted that in *Sinclair*, the appellate court had "rejected the exact same instruction" that the plaintiff was asking the court to give in this case. Indicating its familiarity with *Sinclair*, the circuit court denied the plaintiff's modified instruction and held that the nonmodified long form of IPI Civil (2006) No. 15.01 was "the appropriate instruction in this case."

¶ 9 After due deliberation, the jury returned a verdict in favor of the defendant and against the plaintiff. When later denying the plaintiff's motion for a judgment notwithstanding the verdict, the circuit court noted that the present case required the jury to "assess the credibility of the witnesses and to weigh the evidence." When denying the plaintiff's motion for a new trial, the court reiterated that the nonmodified long form of IPI Civil (2006) No. 15.01 that the jury had received was the "proper recitation of the law with respect to proximate cause." The court further noted that the instruction encompassed the doctrine of lost chance and "certainly did not inhibit" the plaintiff's closing argument to the jury. The present appeal followed.

¶ 10 ANALYSIS

¶ 11 At the outset, we note that the record on appeal only contains transcripts of selected portions of the jury trial. We further note that although the facts essential to our analysis are essentially undisputed, "the appellant bears the burden of supplying this court with a complete record on appeal and any doubts arising from an incomplete record will be resolved in favor of the appellee." *Krklus v. Stanley*, 359 Ill. App. 3d 471, 486 (2005).

¶ 12 The plaintiff argues that the circuit court abused its discretion by refusing her modified instruction on proximate cause. In response, the defendant maintains that in light of Supreme Court Rule 239(a) (eff. Jan. 1, 1999) (directing that an applicable "IPI instruction shall be used, unless the court determines that it does not accurately state the law") and the appellate court's holding in *Sinclair*, it cannot be said that the circuit court abused its discretion in rejecting the non-IPI portion of the plaintiff's instruction. We agree with the defendant.

¶ 13 In *Sinclair*, the plaintiff proposed that the long form of Illinois Pattern Jury Instructions, Civil, No. 15.01 (3d ed. 1995) be amended to include the following proposition:

" 'Proximate causation may be established by proving or showing that Defendant's conduct increased the risk of harm to the Plaintiff, or lessened the effectiveness of the Plaintiff's treatment.' " *Sinclair*, 325 Ill. App. 3d at 466.

The circuit court refused the plaintiff's proposed amendment to the IPI instruction, and on appeal, the plaintiff contended that the court's refusal had denied her a fair trial. *Id.* at 463-64. The appellate court disagreed, noting that the "long-form proximate cause IPI instruction accurately states the law in lost chance medical malpractice cases" and that "the trial court is required by Supreme Court Rule 239(a) [citation] to use the IPI instruction whenever it is applicable." *Id.* at 466. The *Sinclair* court also observed that "lost chance is not a separate theory of recovery," and "[t]he lost chance doctrine, as a form of proximate cause, was encompassed within the instruction given to the jury." *Id.* at 466-67. Lastly, the court noted that "the trial court permitted [the plaintiff] to urge her lost chance theory to the jury during closing arguments," and thus "the trial court's refusal to give [her] proposed lost chance instruction did not deny her a fair trial." *Id.* at 467.

¶ 14 " 'The decision whether to give a non-IPI instruction is within the discretion of the trial court[] and will not be reversed absent a showing of abuse of discretion.' " *Kirkham v. Will*, 311 Ill. App. 3d 787, 791 (2000) (quoting *People v. Hudson*, 157 Ill. 2d 401, 446 (1993)). "An abuse of discretion occurs when the circuit court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the circuit court." *People v. Tolbert*, 323 Ill. App. 3d 793, 797 (2001).

¶ 15 Here, the modified IPI instruction that the plaintiff tendered is nearly identical to that which was tendered and rejected in *Sinclair* (see *Sinclair*, 325 Ill. App. 3d at 466), and as the circuit court noted below, the long form of IPI Civil (2006) No. 15.01 that the jury received encompassed the doctrine of lost chance and "certainly did not inhibit" the plaintiff's closing

argument. We also note that the appellate court recently reaffirmed that *Sinclair* is sound precedent. See *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 45 (2010), *appeal denied*, 238 Ill. 2d 648 (2010).

¶ 16 "It is the absolute duty of the circuit court to follow the decisions of the appellate court" (*In re A.A.*, 181 Ill. 2d 32, 36 (1998)), and the circuit court is not "free to disregard binding authority" (*In re R.C.*, 195 Ill. 2d 291, 298 (2001)). It is thus axiomatic that an abuse of discretion cannot be found where the circuit court's judgment is based on existing precedent (*In re B.J.*, 316 Ill. App. 3d 193, 201 (2000)), and accordingly, we can find no abuse of discretion in the present case.

¶ 17 **CONCLUSION**

¶ 18 For the foregoing reasons, the judgment of the circuit court is hereby affirmed.

¶ 19 Affirmed.