SIXTH DIVISION
December 28, 2012

No. 1-11-0633

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL DURAN, as Special Administrator of the Estate of DOMINIC DURAN, a Minor, Deceased, Plaintiff-Appellant, v. OAK LAWN COMMUNITY HIGH SCHOOL DISTRICT NO. 229, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. 06 L 003480 Honorable Susan Ruscitti-Grussel, Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Reyes concurred in the judgment.
Presiding Justice Lampkin specially concurred in the judgment.

ORDER

HELD: Trial court did not err in giving the jury two special interrogatories asking jurors to determine: (1) whether the sole proximate cause of Dominic's death was a pre-existing heart condition, and (2) whether the school district used ordinary care after Dominic collapsed on the

school's baseball field. The trial court did not err in instructing the jury with the long forms of Illinois Pattern Jury Instructions Civil, Nos. 12.04 and No. 12.05 (2000) (IPI), which included proximate cause language.

The trial court did not err in denying plaintiff's motion *in limine* No. 2, which sought to bar the school district from offering evidence that when the emergency medical technicians (EMTs) from Trace Ambulance, Inc. arrived on the scene, their ambulance was equipped with an automated external defibrillator (AED). The trial court did not err in reversing its order granting plaintiff's motion *in limine* No.14, which prohibited defendant from mentioning that on the date of the incident, April 4, 2005, there was no statute or law in effect requiring defendant to have an AED plan in place.

The trial court did not abuse its discretion in refusing to give plaintiff's tendered jury instructions on "voluntary undertaking." The trial court did not err in allowing defendant to cross-examine its own employee-witnesses following plaintiff's direct examination of these witnesses as adverse witnesses pursuant to section 2-1102 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1102 (West 2000)).

The trial court did not err in failing to hold an evidentiary hearing regarding alleged juror misconduct. The jury's verdict for defendant was not against the manifest weight of the evidence. And there was no cumulative prejudicial error warranting a new trial.

¶ 1 This appeal arises from an action filed by plaintiff Michael Duran, as special administrator of the estate of his deceased son, Dominic Duran, against defendants Oak Lawn Community High School District No. 229, and Trace Ambulance, Inc. On April 4, 2005, fourteen-year-old Dominic suffered a sudden cardiac arrest during a school-sponsored baseball practice. He sustained irreversible brain damage and was eventually disconnected from life support whereupon he died a short time later.

¶ 2 Plaintiff filed claims against defendants sounding in negligence, and willful and wanton conduct, seeking damages under the Wrongful Death Act (740 ILCS 180/0.01 *et seq*. (West 2006)), and the Survival Act (755 ILCS 5/27-6 (West 2006)). Plaintiff alleged that the defendants' failure to timely resuscitate Dominic by administering cardiopulmonary resuscitation (CPR) or by using the school district's automated external defibrillator (AED) caused his son to lose his chance of surviving

his cardiac arrest neurologically intact.

¶ 3 Prior to trial, plaintiff settled his claims against Trace Ambulance, Inc. Trial proceeded on the merits against the school district.

¶ 4 Following a jury trial, the jury returned a general verdict in favor of the school district and against plaintiff, finding that the school district was not liable for Dominic's death. The jury also answered in the affirmative two special interrogatories submitted by the school district, wherein jurors agreed that: (1) the sole proximate cause of Dominic's death was a pre-existing heart condition, and (2) that under the circumstances, the school district used ordinary care after Dominic collapsed on the school's baseball field.

¶ 5 The primary issue on appeal is whether the trial court erred in giving the jury these two special interrogatories. For the reasons that follow, we find that the trial court did not err in this regard. We also reject plaintiff's other claims of error and therefore affirm.

¶ 6 ANALYSIS

¶ 7 As mentioned, the jury returned a general verdict in favor of the school district and against plaintiff, finding that the school district was not liable for Dominic's death. A general verdict has been defined as a "verdict by which the jury finds in favor of one party or the other, as opposed to resolving specific fact questions." *Black's Law Dictionary* 1592 (8th ed. 2004).

¶ 8 When a jury returns a general verdict, the court does not know on what specific basis the jury made its finding. *Gaines v. Townsend*, 244 Ill. App. 3d 569, 575 (1993), citing *Maple v. Gustafson*, 151 Ill. 2d 445, 449 (1992). In addition, when a jury returns a general verdict in a case involving multiple issues and the mental processes of the jury are not tested by special interrogatories to

determine which of the issues was resolved in favor of the successful party, then it will be presumed that all of the issues were resolved in favor of that party. See *Davis v. Kraff*, 405 Ill. App. 3d 20, 39 (2010).

¶ 9 The purpose of a special interrogatory is to ascertain the jury's finding on a specific issue of ultimate fact; the special interrogatory serves as a check upon the jury's deliberations by testing the jury's general verdict against its determination on that ultimate fact. *Lundquist v. Nickels*, 238 Ill. App. 3d 410, 433-34 (1992). If a special interrogatory is inconsistent with the general verdict, then the special interrogatory controls. *Simmons v. Garces*, 319 Ill. App. 3d 308, 316 (2001).

¶ 10 Special interrogatories are governed by section 2-1108 of the Code of Civil Procedure, which provides in relevant part that:

> "Unless the nature of the case requires otherwise, the jury shall render a general verdict. The jury may be required by the court, and must be required on request of any party, to find specially upon any material question or questions of fact submitted to the jury in writing. *** When the special finding of fact is inconsistent with the general verdict, the former controls the latter and the court may enter judgment accordingly." 735 ILCS 5/2-1108 (2000).

¶ 11 Special interrogatories are tendered, ruled upon, and submitted to the jury in the same manner as jury instructions. *Gasbarra v. St. James Hospital*, 85 Ill. App. 3d 32, 37 (1979). Jury instructions are generally reviewed for an abuse of discretion, however our standard of review is *de novo* when the question is whether the applicable law was accurately conveyed. *Linhart v. Bridgeview Creek Development, Inc.*, 391 Ill. App. 3d 630, 637-38 (2009). In addition, we review *de novo* as a

question of law, a trial court's decision regarding giving a requested special interrogatory. *Garcia v. Seneca Nursing Home*, 2011 IL App (1st) 103085, ¶ 35.

¶ 12 When a special interrogatory is in proper form, the trial court has no discretion but to submit it to the jury. *Norton v. Wilbur Waggoner Equipment Rental & Excavating Co.*, 82 Ill. App. 3d 727, 735 (1980). A special interrogatory is in proper form if (1) it relates to an ultimate issue of fact upon which the rights of the parties depend, and (2) an answer responsive thereto is inconsistent with some general verdict that might be returned. *Simmons v. Garces*, 198 Ill. 2d 541, 555 (2002). Special findings are inconsistent with a general verdict only when they are " 'clearly and absolutely irreconcilable with the general verdict.' " *Simmons*, 198 Ill. 2d at 555-56 (quoting *Powell v. State Farm & Casualty Co.*, 243 Ill. App. 3d 577, 581 (1993)).

¶ 13 In this case, the answers to the two special interrogatories at issue were consistent with the general verdict. As a result, the real question is whether there was sufficient evidence supporting the giving of jury instructions on sole proximate cause. See *Brock v. Winton*, 82 Ill. App. 3d 1010, 1012 (1980); *Malpica v. Sebastian*, 99 Ill. App. 3d 346, 350 (1981).

¶ 14 In the instant case, the trial court instructed the jury with the long forms of Illinois Pattern Jury Instructions Civil, Nos. 12.04 and No. 12.05 (2000) (IPI), which included proximate cause language. The long form of IPI Civil (2000) No. 12.04 tendered to the jury read:

> "More than one person may be to blame for causing an injury. If you decide that the defendant was negligent or willful and wanton and that its negligence or willful and wanton conduct was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame.

However, if you decide that the sole proximate cause of injury to the plaintiff was the conduct of some person other than defendant, then your verdict should be for the defendant."

The long form of IPI Civil (2000) No. 12.05 tendered to the jury read:

"If you decide that the defendant was negligent or willful and wanton and that its negligence or willful and wonton conduct was a proximate cause of injury to the plaintiff, it is not a defense that something else may also have been a cause of the injury.

However, if you decide that the sole proximate cause of injury to the plaintiff was something other than the conduct of the defendant, then your verdict should be for the defendant."

¶ 15 The notes for each instruction indicate that the second paragraph should be given only where there is evidence tending to show that the sole proximate cause of the occurrence was a third person (IPI Civil (2000) No. 12.04), or something other than the conduct of the defendant (IPI Civil (2000) No. 12.05). IPI Civil, Nos. 12.04 and No. 12.05 (2000), Notes on Use. Plaintiff contends the trial court erred in tendering the second paragraph of each of the instructions, arguing that the defendant failed to present expert medical testimony indicating that Dominic's pre-existing heart condition was the sole proximate cause of his death, to the exclusion of all other possible causes. We must disagree.

¶ 16 The element of proximate cause is an element of the plaintiff's case. *Yoder v. Ferguson*, 381 Ill. App. 3d 353, 383 (2008). "In any negligence action, the plaintiff bears the burden of proving not only duty and breach of duty, but also that defendant proximately caused plaintiff's injury." *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 93 (1995). A defendant is not required to plead lack

of proximate cause as an affirmative defense. *Leonardi*, 168 Ill. 2d at 93-94. "Rather, a defendant's general denial of liability is sufficient to permit the defendant to raise the sole proximate cause defense and present evidence that the claimed injury was the result of another cause." *McDonnell v. McPartlin*, 192 Ill. 2d 505, 520 (2000), citing *Leonardi*, 168 Ill. 2d at 93-94.

¶ 17 A defendant may endeavor to prove that a third party or some other cause was the sole proximate cause and tender jury instructions on that theory if supported by competent evidence. *Yoder*, 381 Ill. App. 3d at 383. It is within the trial court's discretion to determine if sufficient evidence was presented to give an instruction. *Id* at 384.

¶ 18 In this case, the evidence presented to the jury was sufficient to allow the trial court to give the long-form instructions that included the proximate cause language of which plaintiff complains. The jury heard evidence which allowed it to conclude that Dominic's pre-existing heart condition was the sole proximate cause of his death.

¶ 19 Doctor Nancy Jones, a forensic pathologist and chief medical examiner in Cook County, performed an autopsy on Dominic. Dr. Jones opined that Dominic died of natural causes from complications related to a congenital heart defect. Defendant's medical expert, Doctor Max Koenigsberg, an emergency room physician, opined that Dominic's death was caused by an undiagnosed, unrecognized, and untreated chronic heart condition from a congenital heart defect. The jury also heard testimony from the plaintiff's own medical expert, Doctor Luca Vricella, chief of pediatric heart surgery at John Hopkins Medical Center, who acknowledged that Dominic suffered from advanced ischemic heart disease due to an anomalous coronary artery.

¶ 20 In light of this medical expert testimony, we find that sufficient evidence was presented for

the trial court to instruct the jury with the long forms of IPI Civil (2000) Nos. 12.04 and No. 12.05. The trial court did not abuse its discretion in instructing the jury with the long forms of these jury instructions since the jury could have concluded from the expert medical testimony that Dominic's pre-existing heart condition was the sole proximate cause of his death.

¶ 21 Plaintiff next contends the trial court erred in denying his motion *in limine* No. 2, which sought to bar the school district from offering evidence that when the emergency medical technicians (EMTs) from Trace Ambulance, Inc. arrived on the scene, their ambulance was equipped with an AED. Plaintiff points to the following portion of defense counsel's cross-examination of Mr. Frank Gruber, plaintiff's school-safety expert:

"Q. You probably didn't know that the Trace Ambulance which pulled up to Dominic Duran on the field had an AED in it, did you?

PLAINTIFF COUNSEL: Objection, your Honor, Motion in Limine No. 2.

DEFENSE COUNSEL: Which was overruled, Judge.

THE COURT: Overruled. Sir, you may answer.

PLAINTIFF COUNSEL: May I be heard before the bench, your Honor?

THE COURT: No. Sir, you may answer.

A. Yes, I do believe I did – I was aware that there was an AED in the ambulance.

DEFENSE COUNSEL: Thank you. That's all I have."

¶ 22 Plaintiff argues that he was prejudiced by the admission of this evidence because it enabled the school district to argue that by not using its AED on Dominic, it acted similarly to the EMTs and therefore it used ordinary care and was not negligent. Plaintiff contends that since a plaintiff in a

medical malpractice case cannot establish a deviation from the applicable standard of care by merely presenting expert testimony from another physician that he or she would have acted differently from the defendant (*Walski v. Tiesenga*, 72 Ill. 2d 249, 261 (1978)), then it follows that a defendant should not be permitted to argue that he complied with the applicable standard of care by merely establishing that he acted similarly to another health care professional. We do not believe this line of reasoning supports plaintiff's position.

¶ 23 Evidentiary motions, such as motions *in limine*, are usually directed to the trial court's discretion. *In re Leona W.*, 228 Ill. 2d 439, 460 (2008). In addition, "[a] trial court's decision regarding whether to admit evidence is reviewed for abuse of discretion." *Gill v. Foster*, 157 Ill. 2d 304, 312-13 (1993). An abuse of discretion occurs only if no reasonable person would take the view adopted by the trial court. *In re Leona W.*, 228 Ill. 2d at 460.

¶ 24 Generally, all relevant evidence is admissible. *Mueller v. Yellow Cab Co.*, 110 Ill. App. 3d 504, 508 (1982). Evidence is considered relevant if it tends to prove a fact in controversy or it renders a matter in issue more or less probable. *In re A.W.*, 231 Ill. 2d 241, 256 (2008). "Each party is entitled to present evidence which is relevant to his theory of the case as well as evidence which tends to show conduct inconsistent with an opponent's theory." *Dayan v. McDonald's Corp.*, 125 Ill. App. 3d 972, 982 (1984).

¶ 25 In this case, Mr. Gruber's testimony concerning the ambulance being equipped with an AED was relevant and admissible at trial because it aided the trier of fact in determining whether the defendant's failure to use its AED on Dominic amounted to a breach of the applicable standard of care. "The issue of whether the standard of care in a given case has been exercised is ordinarily one

for the jury." *Simmons v. Aldi-Brenner Co.*, 162 Ill. App. 3d 238, 242 (1987). We find the trial court did not abuse its discretion in admitting Mr. Gruber's testimony concerning the ambulance being equipped with an AED.

¶ 26 Plaintiff next contends the trial court erred in reversing its order granting plaintiff's motion *in limine* No.14, which prohibited defendant from mentioning that on the date of the incident, April 4, 2005, there was no statute or law in effect requiring defendant to have an AED plan in place. We must disagree.

¶ 27 In his complaint, plaintiff alleged in part, that the defendant violated the Automated External Defibrillator Act (AED Act) (410 ILCS 4/1 *et seq*. (West 2000)), by failing to register its AED with the local hospital and with the Oak Lawn 911 call center. Plaintiff alleged that these violations prevented defendant from claiming tort immunity involving its AED, which was located in the concession stand near the baseball field.

¶ 28 Defendant countered that plaintiff failed to plead any facts indicating how its alleged violations of the AED Act were a direct and proximate cause of Dominic's injuries. In support of its arguments in favor of tort immunity, defendant requested to be allowed to elicit evidence that on the date of the incident, there were no laws in effect requiring it to have an AED plan in place.

¶ 29 The trial court denied defendant's request and instead granted plaintiff's motion *in limine* No. 14, prohibiting defendant from mentioning that on the date of the occurrence, there was no statute or law in effect requiring an AED plan to be in place. The trial court also granted, in part, defendant's motion *in limine* No. 26, prohibiting Mr. Gruber from giving any opinion testimony

concerning the usage of an AED, on the ground that he had no expertise in this area.[1]

¶ 30 Nevertheless, at trial, Mr. Gruber testified that on the date of the incident, defendant had an AED on the baseball field in the concession stand, but had no "plan for its use" in effect on said date. Mr. Gruber maintained that this amounted to a violation of the AED Act. The trial court then addressed plaintiff's counsel at a sidebar: THE COURT: "Counsel, we just covered the AED. We just covered that in terms of the motion in limine. I don't understand what is happening at this point. * * * I guess you opened the door."

¶ 31 The trial court subsequently reversed its order granting plaintiff's motion *in limine* No. 14, on the ground that counsel for plaintiff had "opened the door" to evidence of other statutes concerning the usage of AEDs, such as the Physical Fitness Facility Medical Emergency Preparedness Act (Physical Fitness Facility Act) (210 ILCS 74/1 *et seq*. (West 2009) (Public Act 93-910, § 15, effective January 1, 2005; amended effective January 1, 2009, by Public Act 95-712).

¶ 32 We find the trial court properly determined that plaintiff's counsel's direct examination of Mr. Gruber regarding usage of an AED, opened the door to Mr. Gruber being cross-examined about the Physical Fitness Facility Act. On direct examination, Mr. Gruber testified that defendant's failure to have an AED plan in place on April 4, 2005, the date of the incident, amounted to a violation of the AED Act. However, under section 10 of the Physical Fitness Facility Act, which was in effect at the time of the incident, defendant was not required to have an AED plan in place until July 1,

[1] In a hearing outside the presence of the jury and witnesses, counsel for plaintiff pointed out that the trial court had denied defendant's motion *in limine* No. 26. But by this time, the parties and the trial court had already treated the motion as having been granted.

2005.[2] Mr. Gruber's reference to an AED plan opened the door to the admission of evidence relating to the Physical Fitness Facility Act.

¶ 33 Plaintiff next contends the trial court abused its discretion in refusing to give his tendered jury instructions on "voluntary undertaking." Again, we must disagree.

¶ 34 We review a trial court's decision to give or deny a jury instruction for abuse of discretion. *Williams v. Sebert Landscape Co.*, 407 Ill. App. 3d 753, 756 (2011). The function of jury instructions is to convey to the jury the correct principles of law applicable to the submitted evidence. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 507 (2002); see also *City of Naperville v. Watson*, 175 Ill. 2d 399, 408 (1997) ("function of jury instructions is to guide the jury in its deliberations and to help it reach a proper verdict through the application of correct legal principles according to the law and evidence"). "A jury instruction is justified if it is supported by some evidence in the record, and the trial court has discretion in deciding which issues are raised by the evidence." *Clarke v. Medley Moving and Storage, Inc.*, 381 Ill. App. 3d 82, 91 (2008).

¶ 35 In this case, we agree with the trial court that there was no evidence to support giving the jury instructions on voluntary undertaking. Pursuant to the voluntary undertaking theory of liability, one

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[2] "Before July 1, 2005, each person or entity, including a home rule unit, that operates a physical fitness facility must adopt and implement a written plan for responding to medical emergencies that occur at the facility during the time that the facility is open for use by its members or by the public. The plan must comply with this Act and rules adopted by the Department to implement this Act. The facility must file a copy of the plan with the Department." 210 ILCS 74/10(a) (West 2009).

who undertakes, gratuitously or for consideration, to render services to another is subject to liability for bodily harm caused to the other by one's failure to exercise due care in the performance of the undertaking. *Redmon v. Stone*, 281 Ill. App. 3d 517, 523 (1996). However, the duty of care that arises in such a situation is limited to the extent of the undertaking. *Id*.

¶ 36 Here, plaintiff contends that the defendant's purchase of the AEDs was a voluntary undertaking. As a matter of public policy, we do not believe it would be appropriate to impose a legal duty on a party to provide emergency medical care simply because that party voluntarily purchased an AED. Such a holding might discourage institutions from purchasing such medical devices.

¶ 37 Plaintiff next contends the trial court erred in allowing defendant to cross-examine its own employee-witnesses following plaintiff's direct examination of these witnesses as adverse witnesses pursuant to section 2-1102 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1102 (West 2000)). Again, we must disagree.

Section 2-1102 provides in relevant part:

> "Upon the trial of any case any party thereto or any person for whose immediate benefit the action is prosecuted or defended, or the officers, directors, managing agents or foreman of any party to the action, may be called and examined as if under cross-examination at the instance of any adverse party." 735 ILCS 5/2-1102 (West 2000).

¶ 38 Section 2-1102 of the Code governs the examination of adverse witnesses. This section of the Code "permits an adverse party to be questioned as if under cross-examination, and during this type of examination leading questions are permissible." *Dobson v. Rosencranz*, 81 Ill. App. 2d 439,

446 (1967) (construing former section 60 of the Illinois Civil Practice Act (Ill. Rev. Stat. 1965, ch. 110, par. 60)). "Use of this section is proper to bring out facts which a party might not otherwise have been able to bring out." *Babcock v. Chesapeake and Ohio Railway Co.*, 83 Ill. App. 3d 919, 925 (1979).

¶ 39 Following a plaintiff's cross-examination of an adverse witness under section 60 [now section 2-1102], a defense counsel has the right to examine the witness as to matters tending to explain or qualify the testimony given on cross-examination, but not to new matters not brought out on cross-examination or as to matters constituting part of the defendant's defense. *Darling II v. Charleston Community Memorial Hospital*, 50 Ill. App. 2d 253, 319 (1964). Here, plaintiff fails to show how he was prejudiced by the trial court's alleged failure to limit the scope of defendant's examinations of the witnesses at issue. As a result, no relief is warranted on this matter. See *Kenny v. Hinsdale Sanitary District*, 111 Ill. App. 3d 690, 699 (1982).

¶ 40 Next, we reject plaintiff's contention that the trial court erred in failing to hold an evidentiary hearing regarding alleged juror misconduct. The allegations involve juror Pamela Davis. Plaintiff submitted an affidavit stating that while he was seated at the counsel table and the trial judge and attorneys were out of the courtroom holding a sidebar conference, he observed Ms. Davis communicating with witness James Melican.

¶ 41 In response, Ms. Davis submitted an affidavit stating that during the sidebar conference, Mr. Melican attempted to speak to the jury members. Ms. Davis stated that she did remember exactly what Mr. Melican said, but believes it was something to the effect of him being nervous and unsure of what was expected of him. Ms. Davis stated that she did not hear anyone on the jury respond to

Mr. Melican's comments and that she did not personally respond to the comments. Ms. Davis added that at no time during the trial did she ignore, disregard or disobey any of the trial court's instructions, directions or rules.

¶ 42 Plaintiff maintains that these conflicting affidavits warranted an evidentiary hearing regarding possible juror misconduct. On review, we determine whether the trial court abused its discretion in ruling that an evidentiary hearing was not warranted by alleged juror misconduct. *Stallings v. Black and Decker (U.S.), Inc.*, 342 Ill. App. 3d 676, 679-80 (2003). We do not believe the trial court abused its discretion in ruling on the allegations of juror misconduct without conducting an evidentiary hearing on the matter.

¶ 43 In the instant case, plaintiff offered no evidence of a conversation or information exchanged between Mr. Melican and any other juror, let alone Ms. Davis. Since there is no evidence that extraneous prejudicial information came to bear upon the jury's verdict, we cannot conclude that the trial court abused its discretion in denying plaintiff's request for an evidentiary hearing on the issue of alleged juror misconduct. See *Eskew v. Burlington Northern and Santa Fe Railway Co.*, 2011 IL App (1st) 093450, ¶ 69, 958 N.E.2d 426.

¶ 44 Plaintiff next contends that the jury verdict for defendant was against the manifest weight of the evidence. We again disagree.

¶ 45 In considering this argument, we must examine the evidence in the light most favorable to the prevailing party. *Krengiel v. Lissner Corporation, Inc.*, 250 Ill. App. 3d 288, 293 (1993). A jury's verdict is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or where the verdict appears to be arbitrary or unsupported by the evidence. *Mrowca*

v. Chicago Transit Authority, 317 Ill. App. 3d 784, 788 (2000).

¶ 46 Plaintiff maintains there was no competent medical testimony establishing that Dominic's pre-existing heart condition was the sole cause of his death rather than "a" cause of his death. After reviewing the record, we cannot say that the jury's verdict was against the manifest weight of the evidence. Defendant submitted sufficient, competent, and obviously credible evidence allowing the jury to find that Dominic's pre-existing heart condition was the sole proximate cause of his death. Moreover, the verdict was consistent with two special interrogatories where the jury determined that (1) the sole proximate cause of Dominic's death was a pre-existing heart condition, and (2) that under the circumstances, the school district used ordinary care after Dominic collapsed on the school's baseball field.

¶ 47 Plaintiff finally contends that cumulative prejudicial error requires a new trial. However, because there were no errors, let alone cumulative errors, we must reject this claim.

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.

¶ 50 Presiding Justice Lampkin, specially concurring:

¶ 51 I concur in the disposition of this case and with the reasoning of the author of the order. I write separately to briefly address plaintiff's contention that the trial court erred in instructing the jury with the long form of IPI Civil (2000) No. 12.04, concerning a third person's conduct being the sole proximate cause of injury to the plaintiff.

¶ 52 Plaintiff objected to the second paragraph of IPI Civil (2000) No. 12.04, which was tendered to the jury and read:

> "However, if you decide that the sole proximate cause of injury to the plaintiff was the conduct of some person other than defendant, then your verdict should be for the defendant."

According to plaintiff, the inclusion of this second paragraph in the jury instruction was error because defendant failed to present expert medical testimony indicating that the conduct of some person other than defendant was the sole proximate cause of injury to Dominic.

¶ 53 Illinois law provides that "[t]here must be some evidence in the record to justify an instruction, and the second paragraph of IPI Civil (2000) No. 12.04 should be given where there is evidence, albeit slight and unpersuasive, tending to show that the sole proximate cause of the accident was the conduct of a party other than the defendant." *Ready v. United/Goedecke Services, Inc.*, 238 Ill. 2d 582, 591 (2010).

> " 'Whether the jury would have been persuaded is not the question. All that is required to justify the giving of an instruction is that there be some evidence in the record to justify the theory of the instruction.' " *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 101 (1995), quoting *Lowe v. Norfolk & Western Ry. Co.*, 124 Ill. App. 3d 80, 118 (1984).

¶ 54 The evidence presented to the jury was sufficient to justify the inclusion of the second paragraph of IPI Civil (2000) No. 12.04 in the jury instruction. The jury heard testimony that Dominic suffered from a pre-existing heart condition that was never diagnosed by any doctor that saw him during the course of his life. Furthermore, several witnesses, *i.e.*, a fellow baseball player, two coaches, the trainer and the school superintendent, testified that Dominic had a pulse and was

breathing when the Trace Ambulance EMTs took over his care on the baseball field. The jury also heard expert medical testimony that an AED is not used upon a patient who is breathing and has a pulse. In addition, although defendant's medical expert, Dr. Koenigsberg, testified that the actions of both the school district personnel and the EMTs complied with the standard of care, plaintiff's expert, Dr. Vricella, testified that the failure to provide Dominic with proper perfusion on the field resulted in the failed defibrillation attempts at the hospital and Dominic's brain damage and death. The EMTs assumed the care of Dominic over the non-medically trained school district personnel at the scene, and the EMTs decided not to use an AED, which they had in their emergency vehicle, and instead quickly took Dominic to the hospital. The jury also heard testimony about the discrepancy in the EMTs' report concerning their notation for Dominic's pulse when they attended to his care on the field.

¶ 55 Based on all the evidence presented to the jury, the trial court did not abuse its discretion in determining that sufficient evidence was presented to give the jury the second paragraph of IPI Civil (2000) No. 12.04.