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2012 IL App (3d) 110658-U

Order filed July 17, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

SUSAN L. ZALESKY, Independent Administrator )	)	
of the Estate of ANDREW TIFFANY SHAFFER, )	)	
Deceased. )	)	Appeal from the Circuit Court
)	)	of the 21 <sup>st</sup> Judicial Circuit,
Plaintiff-Appellant, )	)	Iroquois County, Illinois
)	)	
v. )	)	Appeal No. 3-11-0658
)	)	Circuit No. 06-L-21
GONZALO FLORIDO, M.D., and )	)	
IROQUOIS MEMORIAL HOSPITAL AND )	)	
RESIDENT HOME, )	)	
)	)	Honorable Adrienne Albrecht,
Defendant-Appellee. )	)	Judge Presiding

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The jury verdict, finding in favor of the defendants, was not against the manifest weight of the evidence. The trial court did not abuse its discretion in denying plaintiff's posttrial motion for a new trial finding prejudicial errors did not occur during the jury trial.
- ¶ 2 Plaintiff filed a medical negligence action against Dr. Gonzalo Florido and Iroquois

Memorial Hospital after her 53-year old brother, Andrew Shaffer, died, on March 7, 2000, from a hemorrhaged gastric ulcer. Experts for both parties agreed that Dr. Florido provided the proper standard of care to address Mr. Shaffer's immediate and urgent medical needs but disputed whether Dr. Florido should have transported Mr. Shaffer to a larger hospital for an earlier consultation with a gastroenterologist.

¶ 3 After the jury returned a verdict in favor of the defendants, the court denied plaintiff's posttrial motion alleging the verdict was against the manifest weight of the evidence or, in the alternative, certain evidentiary rulings by the court denied plaintiff a fair trial. Plaintiff appeals the court's denial of her posttrial motion.

¶ 4 We affirm.

¶ 5 **BACKGROUND**

¶ 6 On September 20, 2001, plaintiff-appellant Susan Zalesky (plaintiff) filed a complaint, as special administrator of the estate of her 53-year old brother, Andrew T. Shaffer (Mr. Shaffer), deceased, against Gonzalo Florido, M.D., and Iroquois Memorial Hospital and Resident Home (Iroquois Hospital) alleging the doctor was negligent in his treatment of Mr. Shaffer. Plaintiff's amended complaint, filed on September 9, 2009, alleged Mr. Shaffer resided at the Magnolia Wood Health Care Center (Magnolia Wood) since 1999 and, from February 24 though March 7, 2000, Dr. Gonzalo Florido negligently provided medical care for Mr. Shaffer, by failing to properly diagnose and treat Mr. Shaffer's bleeding gastric ulcer which resulted in the death of Mr. Shaffer on March 7, 2000. The complaint also alleged Dr. Florido was an agent of Iroquois Hospital and the hospital was joined as a defendant under a theory of vicarious liability.

¶ 7 The court held a hearing on plaintiff's 45 motions *in limine* and defendants' 3 motions *in*

*limine* prior to the jury trial. The parties prepared a bystanders' report, filed January 18, 2012, regarding the court's rulings on the motions *in limine* for purposes of appellate review.

¶ 8 The jury trial began on February 7, 2011, and continued for several days. As her first witness, plaintiff presented the telephone evidence deposition of Dorothy Corriveau, a registered nurse at Magnolia Wood in 2000, where Mr. Shaffer resided immediately before his last hospitalization. She explained, as a skilled care nursing home, the nursing home staff could "run IV starts," administer IV fluids and medications, remove sutures, perform advanced treatments for wounds, provide hospice care, and administer subepidermal medications through subcutaneous ports, in addition to giving shots and medication.

¶ 9 Ms. Corriveau testified her nursing notes from Magnolia Wood documented, in January of 2000, Mr. Shaffer's vital signs were within normal ranges with the exception of his high blood sugar levels. Ms. Corriveau said Mr. Shaffer had a history of noncompliance in controlling his diabetes by choosing to eat sugary foods in spite of Dr. Florido's orders for a "low concentrated sweet diet." According to Ms. Corriveau, Dr. Florido visited Mr. Shaffer on February 21, 2000, and on February 29, 2000, and ordered extra lab tests. On March 1, 2000, based on Mr. Shaffer's lab results, Dr. Florido prescribed antibiotics for pneumonia, prednisone for headaches, and suggested Mr. Shaffer eat more food and drink more fluids. According to the nurse's notes, on March 5 at 4 p.m., Mr. Shaffer was pale, somewhat dehydrated, complained of weakness, and his blood sugar was up to 483. Dr. Florido ordered Ms. Corriveau to start intravenous fluids, provide additional insulin, and Mr. Schaffer be directly admitted into Iroquois Hospital the next morning.

¶ 10 Dr. Alfred Torrence next testified in plaintiff's case.<sup>1</sup> Dr. Torrence testified he was a board-certified internal medicine physician, with expertise in gastrointestinal ulcers and bleeding. Upon review of Mr. Shaffer's medical records, Dr. Torrence opined that Dr. Florido deviated from the acceptable standard of care because the doctor should have hospitalized Mr. Shaffer on February 29, 2000, due to his abnormal lab results. According to Dr. Torrence, if Mr. Shaffer had been admitted sooner, the bleeding gastric ulcer might have been detected and then treated prior to March 6, 2000. However, Dr. Torrence agreed the skilled care nursing home was a sufficient place to monitor Mr. Shaffer's condition instead of the hospital.

¶ 11 Dr. Torrence stated Mr. Shaffer's records showed, on March 6, 2000, he was admitted to Iroquois Hospital with symptoms including: fever, pneumonia, dehydration, bloody stools, and hypovolemic shock, a life threatening condition. According to Dr. Torrence, Dr. Florido's initial order that Mr. Shaffer be resuscitated with IV fluids and units of blood was the correct immediate treatment. However, Dr. Torrence testified that, once Mr. Shaffer's condition became stable around 4:30 p.m. on March 6, Dr. Florido should have transferred Mr. Shaffer to a larger hospital for a gastrointestinal consultation. Dr. Torrence agreed Mr. Shaffer was still in a dangerous health condition, at that time, and Dr. Florido had to rely on his clinical judgment by balancing the benefits versus the risks of transferring Mr. Shaffer on March 6, 2000. Dr. Torrence opined that the failure to transfer Mr. Shaffer for this gastrointestinal consultation was a deviation from Dr. Florido's requisite standard of care because a gastrointestinal consultation with a specialist, at that time, could have prevented the further bleeding which resulted in Mr. Shaffer's death on

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<sup>1</sup> The appellate record does not contain the transcript of Dr. Torrence's testimony, but the parties stipulated to his testimony presented during the jury trial in a bystanders' report filed on January 18, 2012.

March 7, 2000.

¶ 12 Next, plaintiff called Dr. Florido, as an adverse witness, who testified he was an internal medicine doctor and had practiced medicine at Iroquois Hospital since 1993. Dr. Florido testified, in 2000, as part of his practice, he saw patients at the local nursing homes, including Magnolia Wood where Mr. Shaffer was his patient. Dr. Florido said, on the morning of March 6, 2000, Mr. Shaffer was in very serious condition with hypovolemic shock (very low blood pressure) when he arrived at the hospital. Consequently, Dr. Florido gave Mr. Shaffer fluid resuscitation and two blood transfusions which brought the patient out of hypovolemic shock. Dr. Florido ordered an “NG tube” which showed no blood in the NG tube to indicate fresh blood in the stomach, and also ordered a gastroenterologist consultation.

¶ 13 Dr. Florido said he knew a person with chronic kidney problems and who was also under stress, on prednisone, and on an aspirin regiment, such as Mr. Shaffer, was more prone to bleeding. Dr. Florido said, without objection, he was aware Iroquois Hospital did not have a resident gastroenterologist present on March 6, 2000, but a nurse told him Dr. Bokhari, a gastroenterologist, was scheduled to be present at the hospital on March 7, 2000. Dr. Florido stated he did not personally consult with Dr. Bokhari or any other gastroenterologist regarding Mr. Shaffer’s condition on March 6, 2000.

¶ 14 Next, plaintiff presented portions of the discovery deposition of Dr. Bryan Mitchell, the pathologist who conducted the autopsy, who was deceased at the time of trial. According to his report, Dr. Mitchell concluded the cause of Mr. Shaffer’s death resulted from leaking blood, for a period of 12-24 hours, from an acute gastrointestinal hemorrhage due to a gastric ulcer. The pathology report also indicated the presence of “nephrosclerosis empyema” and a congenital

malformation of the brain, but Dr. Mitchell could not conclude any of these factors contributed to or caused Mr. Shaffer's death.

¶ 15 Plaintiff Susan Zalesky testified she was Mr. Shaffer's sister and, at the time of death, Mr. Shaffer was 53 years old and did not have a wife or children. Plaintiff stated Mr. Shaffer was diagnosed with cerebral palsy when he was four months old, but he could still live alone, maintain employment, and drive a car as an adult. Plaintiff said Mr. Shaffer's diabetes was first diagnosed during his late 40's or early 50's and, thereafter, Mr. Shaffer moved into Meadowbrook Manor, a nursing home in Bolingbrook, Illinois, because he required nursing supervision 24 hours a day. In 1999, he chose to relocate to Magnolia Wood in Iroquois County. Plaintiff testified she knew Mr. Shaffer kept his blood sugar higher than normal because he claimed he felt better when it was higher.

¶ 16 Plaintiff stated Mr. Shaffer did not look well, in late February 2000, and the nurse told her he was "tired because he had a cold." Plaintiff next saw Mr. Shaffer on March 6, 2000, at Iroquois Hospital, and Dr. Florido told her Mr. Shaffer had internal bleeding which possibly was a bleeding ulcer. Later that day, Dr. Florido told plaintiff the bleeding had stopped and Mr. Shaffer's condition had stabilized, his vital signs had improved, and he was "out of the woods." The next morning, around 6:30 a.m., plaintiff said she received a phone call from the hospital that Mr. Shaffer had passed away.

¶ 17 Finally, plaintiff presented the videotape evidence deposition of Dr. Meyer Solny, a gastroenterologist who had been practicing for over 30 years and was retained to testify as plaintiff's expert witness. According to Dr. Solny, on March 5, 2000, Mr. Shaffer suffered for many years from a variety of non-life threatening, pre-existing medical conditions such as

cerebral palsy, diabetes, chronic insufficiency of kidney function, and high blood pressure. Dr. Solny said the medical records indicated, on February 29, 2000, Mr. Shaffer developed a fever and Dr. Florido ordered a variety of blood and lab tests. The lab results “were notable for” anemia, abnormal kidney function, and a high white blood count indicating a possible infection or inflammation.

¶ 18 Dr. Solny stated, on March 6, 2000, Mr. Shaffer had a large, bloody bowel movement indicating possible gastrointestinal bleeding. At that time, Mr. Shaffer was also in hypovolemic shock, a life-threatening condition, where his blood pressure had dropped to 78 over 40, caused, in part, by the gastrointestinal bleeding. According to Dr. Solny, Mr. Shaffer’s condition required the immediate administration of fluids and, if the patient was severely anemic, a blood transfusion. Plaintiff’s expert agreed Dr. Florido provided his patient with the appropriate standard of care by providing those resuscitative efforts during the morning and afternoon of March 6, 2000. In Dr. Solny’s opinion, by 4:35 p.m. on March 6, Mr. Shaffer’s blood pressure and blood counts had risen to a sufficient level where Dr. Florido should have “turned to diagnostic measures” to determine the source and cause of the bleeding. Dr. Solny said this was when Dr. Florido’s care fell “below the standard of care” and Dr. Florido “did depart from the usual and customary standards of care that would be expected.” Dr. Solny felt it was “safe” to transfer Mr. Shaffer to another hospital by 4:30 p.m. and Dr. Florido should have transferred the patient to, or called in to Iroquois Hospital.

¶ 19 In Dr. Solny’s opinion, the delay and failure to obtain a gastroenterology consult and evaluation on March 6, 2000, prevented Mr. Shaffer from receiving necessary treatment to stop the bleeding which caused Mr. Shaffer’s death. Dr. Solny stated he thought Mr. Shaffer had

received the drug, propranolol, but agreed, without that drug, Mr. Shaffer's heart rate should have been over 100 if he were actively bleeding.<sup>2</sup> Dr. Solny testified the records showed Mr. Shaffer was given an EKG test at 4:55 a.m. on March 7, 2000, and his heart rate was normal. However, Dr. Solny testified, in his opinion, Mr. Shaffer's heart rate dropped, resulting in his death, as a result of bleeding throughout the night of March 6, 2000.

¶ 20 Cheryl Shields testified she was a nurse at Iroquois Hospital in 2000, working the 7 p.m. to 7 a.m. shift, and Mr. Shaffer had been an ICU patient of hers. Ms. Shields said Mr. Shaffer had been admitted into the hospital for a "GI bleed," and the medical charts documented, at 10:45 p.m. on March 6, 2000, Mr. Shaffer had a "mahogany" colored bowel movement which indicated "old blood" in his stool. She said she noted, at 11:15 p.m., Mr. Shaffer still had "old" blood in his stool, his blood pressure was good at 120 over 68, but Mr. Shaffer's blood sugar level was still high at 390. Ms. Shields said she called Dr. Florido at 6:00 a.m. on March 7, 2000, to tell him Mr. Shaffer appeared stable. Ms. Shields testified there was no negative change in Mr. Shaffer's condition until 6:25 a.m., when his ICU monitors sounded alarms indicating Mr. Shaffer's heart rate dropped below 50 beats per minute. Since Mr. Shaffer had a "do not resuscitate" (DNR) order, the staff took no further action when his heart rate quickly dropped and eventually stopped beating at 6:32 a.m.

¶ 21 The defense first called Dr. Jonathan Osborn, a board-certified family practitioner in Clinton County, Illinois, which is a rural county similar to Iroquois County. He stated defendants retained him to review the records to provide an expert opinion regarding Dr. Florido's care of

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<sup>2</sup> Mr. Shaffer's records indicated he was allergic to propranolol and there were no indications that Mr. Shaffer received that drug.

Mr. Shaffer. Dr. Osborn testified it was his opinion that Dr. Florido used the appropriate standard of care when treating Mr. Shaffer, emphasizing smaller hospitals do not always have specialists instantly available to address patients' needs and, in acute emergency cases, the family practitioner and internist address these problems without turning the case over to a specialist.

¶ 22 Dr. Osborn stated the medical records from Magnolia Wood showed Mr. Shaffer had his first bloody stool, known to his medical providers, shortly before he was admitted into the hospital on March 6, 2000. Dr. Osborn opined Dr. Florido met the appropriate standard of care, at the time Mr. Shaffer was admitted, by addressing several serious issues, including:

compromised circulation due to dehydration, high blood sugars, and low blood pressure which was 80 over 40. Dr. Osborn said Dr. Florido "instituted aggressive care" with transfusions and fluids to correct the anemia and the abnormal renal function, as well as ordering an insulin drip for the high blood sugar.

¶ 23 According to the records reviewed by Dr. Osborn, Dr. Florido noted on March 6, 2000, "[w]e will also refer him to a GI as soon as he is stable." Dr. Osborn stated this was within the appropriate standard of care because the actual gastrointestinal scopes can be relatively dangerous to an extremely ill patient and make the patient sicker. Dr. Osborn testified that, although it is important to determine the source of the bleeding, there were other more serious problems to address first. According to Dr. Osborn, Dr. Florido correctly decided the patient was not stable enough, on March 6, to tolerate the ambulance ride because of his high blood sugar levels, marked renal failure, and acidosis that compromised both circulation and heart rate.

Those conditions, enhanced by the stress of an ambulance transfer, could have been fatal for Mr. Shaffer. When asked whether Mr. Shaffer was sufficiently stable by "the late evening hours of

March 6" to be transferred by ambulance, Dr. Osborn responded, "It is my opinion [\*\*\*] that he was stable enough to be observed over night not showing any signs of bleeding with an anticipated GI consult in the morning." In Dr. Osborn's opinion, after reviewing all of the records and criticisms from Drs. Torrence and Solny, Dr. Florido acted as a reasonably careful physician for this patient, based on these circumstances, and the actions of Dr. Florido caused no harm to the patient.

¶ 24 The next witness, Dr. Paul Schlesinger, testified he was a gastroenterologist, retained by the defense to give his opinion about Dr. Florido's care of Mr. Shaffer. Dr. Schlesinger stated, based on the Magnolia Wood records from February 29 to March 6, 2000, Mr. Shaffer's fever subsided and he seemed to be doing well until March 5, 2000, when it was documented Mr. Shaffer had become weaker and confused. Dr. Schlesinger agreed with Dr. Florido's assessment that there was no compelling reason to admit Mr. Shaffer into the hospital on February 29, 2000, in spite of abnormal lab tests, and agreed prescribing steroids for the temporal arteritis headaches and biaxin for pneumonia to be administered by the nursing home staff was correct.

¶ 25 Mr. Shaffer was placed on IV fluids at Magnolia Wood, prior to the hospitalization, due to concerns about dehydration. By the next morning, March 6, the nursing notes from Magnolia Wood indicated that Mr. Shaffer was alert and oriented, which was a "significant change from where he was the previous day." Although there was improvement, on March 6, Dr. Florido admitted Mr. Shaffer into Iroquois Hospital for further evaluation, and almost immediately transferred him to the intensive care unit (ICU) and ordered additional lab tests. Dr. Florido ordered immediate fluid resuscitation and ordered blood transfusions for later that day. When asked whether all of those orders by Dr. Florido were consistent with "the actions of a reasonably

careful physician acting in the same or similar localities to this,” Dr. Schlesinger responded, “Absolutely.”

¶ 26 In Dr. Schlesinger’s opinion, the most important component of a proper treatment regime, upon admission to the hospital, was fluid resuscitation and stabilization of the patient's vital signs before considering doing an invasive procedure such as an endoscopy, even with the presence of gastrointestinal bleeding. Dr. Schlesinger said, 80 percent of the time, upper gastrointestinal bleeding stops spontaneously and it was logical to wait until the next morning to obtain the gastrointestinal consultation without transporting Mr. Shaffer to another hospital. Dr. Schlesinger determined Dr. Florido’s decision to wait until the next day, March 7, 2000, for a gastroenterologist consultation at Iroquois Hospital, was the right decision.

¶ 27 Dr. Schlesinger testified he disagreed with the opinions of Drs. Torrence and Solny, that Mr. Shaffer should have been transferred by ambulance, on March 6, to a larger hospital. Dr. Schlesinger said there was a danger the patient could become unstable again, during the 45 to 55-minute ambulance ride, and would not be able to be treated properly while in the ambulance. According to Dr. Schlesinger, Dr. Florido acted as a reasonably careful physician in this situation and, in his opinion, within a reasonable degree of medical certainty, Dr. Florido’s actions and orders “had nothing to do with causing the death” of Mr. Shaffer. In fact, according to Dr. Schlesinger, the actions taken by Dr. Florido “very much stabilized the patient and prolonged his life from when he was admitted in a very unstable situation the morning prior.”

¶ 28 Dr. Dean Hawley, a forensic pathologist retained by the defense, testified it was his opinion, based on his review of the autopsy report and photographs, the photos showed “fresh acute bleeding blood that had just accumulated inside the body at the time of death.” According

to Dr. Hawley, a stomach ulcer eroded completely through the mucosa into the wall of the stomach and then beyond into the support blood vessels of the stomach.

¶ 29 In Dr. Hawley's opinion, based on the autopsy report, the bleeding in Mr. Shaffer's stomach was not the sole cause of death, but was one of many contributing factors. Dr. Hawley testified that Mr. Shaffer had "single ventricle" cerebral palsy, which can result in respiratory difficulties, consistent with Mr. Shaffer's pneumonia. Additionally, Dr. Hawley said Mr. Shaffer's autopsy showed an "abscess or empyema in the pleural space of the chest cavity," which few people could survive, and that Mr. Shaffer had kidney failure from his diabetes causing an endocrine malfunction resulting in a bed sore and pneumonia. In Dr. Hawley's opinion, all of these issues were interrelated and all of them contributed to Mr. Shaffer's death. Dr. Hawley opined that Mr. Shaffer's excessive bleeding occurred for a few minutes, up to an hour, immediately prior to death, and "would have been associated with a sudden death."

¶ 30 Dr. Robert Briney's videotaped evidence deposition was next presented to the jury. Dr. Briney said Mr. Shaffer was one of his patients at Meadowbrook Manor from 1997 to 1999, until Mr. Shaffer relocated to Magnolia Wood. Dr. Briney said Mr. Shaffer had a history of anemia, malnutrition, dehydration, pneumonia, sepsis, ulcers on the skin, cerebral palsy, insulin dependent diabetes, and a prior surgery for glaucoma. One complication of diabetes is that the person is more susceptible to infection and Dr. Briney said the effects of Mr. Shaffer's combined diagnoses "is not conducive to longevity."

¶ 31 Next, nurse Ann Marie Drayer stated, on March 6, 2000, she worked in the ICU at Iroquois Hospital. She said, on March 6, 2000, at 12:46 p.m., Mr. Shaffer had elevated blood sugars which registered 419. At 1:45 p.m., the records showed that Mr. Shaffer received the

first unit of blood and a second unit of blood was transfused by 4:35 p.m. She stated there was also an order in the records that the patient should see Dr. Bokhari for a “GI consult.”

¶ 32 Ms. Drayer said, pursuant to Dr. Florido’s orders, she placed a nasogastric tube through Mr. Shaffter’s nose and down to his stomach, on March 6, 2000, with a suction pump to determine if blood returned through this tube. No blood appeared to be present in the tubing from the patient’s stomach. Ms. Drayer said, if there was active bleeding in the stomach, it should have come out through this tube. Throughout her shift, Ms. Drayer said Mr. Shaffer’s blood pressure improved, eventually reaching a normal range and stabilizing his vital signs.

¶ 33 Dr. Florido then testified in his case-in-chief, and explained the training he received at various hospitals prior to working in the Iroquois area. In 1999, Mr. Shaffer became Dr. Florido’s patient at Magnolia Wood, a skilled care nursing home which provided a higher care level than that provided by many nursing homes. Initially, Dr. Florido treated Mr. Shaffer to control his diabetes, and Mr. Shaffer opted to keep his blood sugar above 200 because he said he felt better at this level. Dr. Florido said he informed Mr. Shaffer about the complications of diabetes that could occur if the disease was not properly controlled, including: kidney disease, eye problems, autonomic neuropathy resulting in numbness, and open sores, and infections which could lead to amputations.

¶ 34 Dr. Florido said he learned Mr. Shaffer was suffering headaches around February 28, 2000, and ordered a CAT scan and a complete blood count on March 1, 2000. According to Dr. Florido, the CAT scan showed internal hydrocephalus, a build up of fluids in the ventricles of the brain and the blood tests revealed temporal arteritis, a condition common in people with diabetes which can result in blindness if left untreated. As a result, Dr. Florido visited Mr. Shaffer at the

nursing home late that evening and prescribed prednisone, an anti-inflammatory steroid, which Mr. Shaffer started receiving on March 1, 2000. Dr. Florido also ordered a chest X-ray which showed bronchial pneumonia so he ordered antibiotics to address that condition. The complete blood results showed the cause of Mr. Shaffer's anemia was "anemia of chronic disease." Dr. Florido said he did not hospitalize Mr. Shaffer, based on these lab results, because the skilled care nursing home could properly monitor his condition where Mr. Shaffer would be more comfortable.

¶ 35 From March 3 to March 6, 2000, Dr. Florido testified Mr. Shaffer continued to be monitored by the nursing home, and Mr. Shaffer no longer complained of headaches and seemed to be improving. On the evening of March 5, 2000, Dr. Florido said he received a phone call from the Magnolia Wood staff with concerns Mr. Shaffer was becoming dehydrated. Consequently, Dr. Florido ordered the nurses start IV fluids for Mr. Shaffer that night and ordered he be directly admitted into the hospital the next morning. Upon admission to the hospital, on March 6, Dr. Florido first learned that Mr. Shaffer had bloody stools and Mr. Shaffer's blood pressure was low causing hypovolemic shock.

¶ 36 On March 6, 2000, Dr. Florido ordered IV fluids be increased in order to resuscitate Mr. Shaffer until the blood pressure increased to an acceptable level. The test results also showed Mr. Shaffer had a highly elevated blood sugar count, over 700, which also contributed to the dehydration which needed to be brought down with an "insulin drip." Dr. Florido ordered more lab testing at the hospital, which now showed severe anemia, due to the bleeding, so the doctor also ordered oxygen for Mr. Shaffer. Dr. Florido said he ordered a referral to the gastro-intestinal specialist, Dr. Bokhari, to determine the location and cause of the bleeding as soon as Mr.

Shaffer was stabilized. At that time, the nurses told Dr. Florido that Dr. Bokhari was expected at the hospital the next day.

¶ 37 Dr. Florido testified he did not agree with the opinions of Dr. Torrence and Dr. Solny that Mr. Shaffer should have been transferred by ambulance to a bigger hospital on March 6, 2000, for a gastroenterologist consultation based on considering only that Mr. Shaffer's blood pressure was stable. In Dr. Florido's opinion, he had to consider the total picture to determine whether his patient was stable enough to transfer, based on multiple considerations including: his high blood sugar, his anemia and blood loss, his pneumonia, his kidney problems, and his high BUN and creatin levels. With this combination, Dr. Florido felt that Mr. Shaffer needed to remain in intensive care to monitor and treat all of those conditions. As of 4:30 or 5 p.m. on March 6, 2000, in Dr. Florido's opinion, Mr. Shaffer was not a suitable candidate for transfer by ambulance to a larger hospital. At 6:30 p.m., Dr. Florido allowed the nasogastric tube to be removed from Mr. Shaffer, at Mr. Shaffer's request, because it had not shown any signs of fresh bleeding all day. Additionally, Dr Florido ordered an additional broad spectrum antibiotic to be administered intravenously to Mr. Shaffer to address the pneumonia and any possible stomach infection. Dr. Florido said he then left the hospital for the night.

¶ 38 Dr. Florido was not contacted by any hospital staff until 6 a.m. the next morning when nurse Shields called him and reported Mr. Shaffer was stable throughout the night, his blood pressure was normal, his vital signs had been good, and he did not complain of pain or discomfort. Dr. Florido said he ordered another set of blood tests and ordered two units of blood be available for Mr. Shaffer in the event of an emergency.

¶ 39 According to Dr. Florido, the next phone call he received from the hospital, around 6:35

a.m., informed him Mr. Shaffer had passed away. Dr. Florido testified that, in his opinion, he “acted as a reasonably careful physician that any internist or a physician which has been given this certain situation.” Additionally, Dr. Florido stated he did not believe his actions caused harm to Mr. Shaffer and he acted in the best interests of the patient.

¶ 40 Dr. Florido testified he did not personally call Dr. Bokhari to ask him to make a special trip to Iroquois Hospital, or have Mr. Shaffer transferred to him, for a gastrointestinal consultation on March 6, 2000, nor did he contact any other gastroenterologist on March 6. Dr. Florido reiterated that his first concern, on that date, was to stabilize the patient.

¶ 41 Plaintiff then called Dr. Michael Kaufman, a pathologist, who stated he reviewed Mr. Shaffer’s medical records and the autopsy report, as well as deposition transcripts and the opinion testimony of Dr. Hawley, for purposes of testifying for plaintiff. Dr. Kaufman said the cause of Mr. Shaffer’s death was a significant gastrointestinal bleeding or hemorrhage from a large gastric ulcer. According to Dr. Mitchell’s report, Dr. Kaufman said there was blood and a blood clot within the stomach, as well as within the rest of the digestive tract. Dr. Kaufman opined that the hemorrhage was not a “blow out” because the photo showed the bottom of the deep ulcer was intact, and a “blow out” would have pooled blood in Mr. Shaffer’s stomach, which was not reported by Dr. Mitchell. Therefore, in Dr. Kaufman’s opinion, the ulcer caused the artery or vein to leak blood, which eventually caused Mr. Shaffer’s death. From the records, Dr. Kaufman believed the bleeding started at least one day before Mr. Shaffer’s bloody stool on March 6, 2000. Dr. Kaufman stated, due to the absence of blood pooling in the stomach, Dr. Kaufman disagreed with Dr. Hawley’s opinion about the ulcer being perforated. Dr. Kaufman agreed with the plaintiff’s other experts that the cerebral palsy, diabetes, or renal disease did not

cause Mr. Shaffer's death in any way.

¶ 42 The jury was instructed, in Plaintiff's No. 8, to find defendants were negligent in one or more ways including: failure to provide timely and appropriate follow-up care to Andrew Shaffer after his abnormal lab results from February 29, 2000; failure to order the immediate hospitalization of Andrew Shaffer after the February 29 abnormal lab results; failure to properly evaluate, diagnose and treat Andrew Shaffer's gastrointestinal ulcer, which resulted in continued bleeding and the death of Andrew Shaffer from gastrointestinal hemorrhage; failure to obtain a gastrointestinal evaluation for Andrew Shaffer on March 6, 2000, which resulted in the death of Andrew Shaffer from intestinal bleeding; and failure to arrange for transfer of Andrew Shaffer to another hospital for a gastrointestinal evaluation on March 6, 2000. The instruction further claimed that one or more of the foregoing negligence claims was a proximate cause of Andrew Shaffer's injuries and death. Illinois Pattern Jury Instructions, Civil (2008) No 20.01.

¶ 43 The jury returned a verdict finding in favor of Dr. Florido and Iroquois Hospital and against plaintiff. Subsequently, plaintiff filed a 21-page posttrial motion, on April 18, 2011, arguing, in part, plaintiff did not receive a fair jury trial because the defense improperly focused on Mr. Shaffer's pre-existing conditions allowing the jury to infer that these conditions were the cause of Mr. Shaffer's death. Plaintiff also requested a new trial because the verdict was against the manifest weight of the evidence.

¶ 44 The court ruled the evidence of Mr. Shaffer's pre-existing medical conditions, other than the bleeding ulcer, were relevant to all of Dr. Florido's actions with regard to treating Mr. Shaffer upon his admission into the hospital, as well as factoring into Dr. Florido's decision that Mr. Shaffer was not stable enough to transport by ambulance to a different hospital. The court

determined the experts from both sides “thoroughly and completely and within the bounds that the court set out and within the bounds of the law presented their case to the jury, and as a result, I can’t say that the verdict is against the manifest weight of the evidence.” The court found the evidence that Dr. Florido received information that Dr. Bokhari would be at Iroquois Hospital on March 7, 2000, was relevant to Dr. Florido’s state of mind when making his treatment decisions. Accordingly, the court denied plaintiff’s posttrial motion. Plaintiff appeals the court’s denial of her posttrial motion.

¶ 45

### ANALYSIS

¶ 46 On appeal, plaintiff argues the trial court erred by denying her posttrial motion on two alternate grounds. First, plaintiff submits the jury’s verdict was against the manifest weight of the evidence and, second, the trial court’s decision to allow the defense to introduce unfairly prejudicial evidence denied plaintiff a fair trial in this case.

¶ 47 The defense contends the jury’s finding was not against the manifest weight of the evidence. Additionally, the defense submits the court did not err in admitting the evidence at issue in this appeal but, even if error occurred, plaintiff forfeited those errors for purposes of this appeal.

¶ 48

#### I. Jury’s Verdict Against the Manifest Weight of the Evidence

¶ 49 First, plaintiff argues the trial court should have granted her posttrial motion for a new trial because the jury’s verdict was against the manifest weight of the evidence. A court’s ruling on a motion for a new trial will not be reversed unless it is affirmatively shown that it clearly abused its discretion. *York v. Rush Presbyterian St. Luke’s Medical Center*, 222 Ill. 2d 147, 179 (2006); *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (1992). When deciding whether the trial court

abused its discretion in denying a motion for new trial, the reviewing court should consider whether the jury's verdict was supported by the evidence and whether the losing party was denied a fair trial. *Maple*, 151 Ill. 2d at 455. A trial court should only grant such a motion when the verdict is contrary to the manifest weight of the evidence, and it is clearly evident or the jury's findings prove to be unreasonable, arbitrary and not based upon any of the evidence. *York*, 222 Ill. 2d at 178-79.

¶ 50 Here, plaintiff's three expert doctors agreed Dr. Florido adhered to the appropriate standard of care throughout his treatment of Mr. Shaffer until Dr. Florido decided Mr. Shaffer was not stable enough to transport by ambulance to a larger hospital sometime after 4:30 p.m. on March 6, 2000, for a gastroenterologist consultation. Thereafter, the plaintiff's experts concluded Dr. Florido deviated from the requisite standard of care used by a reasonably careful physician by not diagnosing and treating Mr. Shaffer's gastric ulcer that, in their opinions, had been leaking blood for a period of time.

¶ 51 In his defense, Dr. Florido presented three expert doctors who testified Mr. Shaffer's ulcer caused a sudden and acute hemorrhage, rather than creating continuous blood seepage over an extended period of time. Consequently, the defense experts agreed Dr. Florido's decision to wait for the gastroenterologist to evaluate Mr. Shaffer at Iroquois Hospital the day following his admission met the standard of care for a reasonably careful physician practicing in a rural hospital. The defense experts agreed with Dr. Florido's decision not to transport Mr. Shaffer to a bigger hospital, requiring a 45 to 60-minute ambulance ride, to consult with a gastroenterologist on March 6, 2000, because the defense experts felt Mr. Shaffer was not stable enough to make the trip and/or withstand the procedure.

¶ 52 The defense experts testified that the risks of transporting Mr. Shaffer to see the gastroenterologist during the evening of March 6, outweighed the possible benefit of allowing the patient to remain at Iroquois hospital to become more stable until the next day, March 7, 2000, when Dr. Bokhari would be able to examine the patient at Iroquois Hospital. In addition, the defense experts opined that Dr. Florido's actions and decision to postpone the consultation with the gastrointestinal specialist for a few hours, based on the fact the specialist would be available to the patient at Iroquois Hospital on March 7, did not cause the death of Mr. Shaffer.

¶ 53 The plaintiff's posttrial motion requested the trial court to find the verdict was against the manifest weight of the evidence and order a new trial. For the trial court to grant a new trial, the court would have to find, based upon the evidence presented, the opposite conclusion was clearly evident or the jury's verdict was unreasonable, arbitrary, and not based on the evidence. See *York*, 222 Ill. 2d at 178-79. In this case, we conclude the jury's verdict was supported by the evidence although the expert testimony introduced by the plaintiff conflicted with the opinions of the expert witnesses for the defense.

¶ 54 Here, the jury had the opportunity to hear the evidence, observe the witnesses and their testimony, determine the witnesses' credibility, resolve inconsistencies and conflicts in the expert witnesses' testimony, and draw inferences from the evidence before reaching its verdict. See *York*, 222 Ill. 2d at 179. After our careful and thorough review of the record, we conclude the trial court's denial of plaintiff's posttrial motion for a new trial did not constitute an abuse of discretion because the jury's verdict was not contrary to the manifest weight of the evidence.

¶ 55 **II. Plaintiff Denied a Fair Trial**

¶ 56 Next, plaintiff claims the trial court committed error as a result of multiple evidentiary

rulings that over-emphasized Mr. Shaffer's pre-existing conditions and contained inadmissible hearsay which denied plaintiff a fair trial. Consequently, plaintiff submits the trial court should have granted the motion for new trial. In response, the defense contends plaintiff's failure to object to certain evidence during the trial results in forfeiture. In the alternative, the defense claims the trial court did not err by allowing evidence regarding Mr. Shaffer's pre-existing medical conditions because this information was relevant to determine the propriety of Dr. Florido's decisions regarding his patient's care and treatment from February 29 through March 7, 2000. The defense also argues the hearsay evidence concerning Dr. Bokhari's scheduled presence at the hospital on March 7 addressed Dr. Florido's state of mind when making decisions regarding Mr. Shaffer's care, and was not offered for the truth of the matter asserted as a hearsay statement.

¶ 57 In this case, plaintiff filed certain motions *in limine* seeking to exclude testimony regarding the admission of double hearsay concerning the fact that a gastroenterologist was scheduled to be at Iroquois Hospital on March 7, 2000, because this information was highly prejudicial to plaintiff's case. In addition, plaintiff sought to exclude all evidence regarding Mr. Shaffer's pre-existing conditions. The court either granted, denied, or reserved ruling on these pretrial motions.

¶ 58 At trial, the plaintiff initially introduced evidence concerning Mr. Schaffer's various pre-existing medical conditions, *through its own witnesses*, without moving to strike the testimony. Additionally, *plaintiff's witnesses* also testified Dr. Bokhari was expected to be present at Iroquois Hospital on March 7, 2000, and plaintiff did not request to strike this testimony. The defense witnesses then discussed these circumstances, after first being presented to the jury

during the plaintiff's case-in-chief.

¶ 59 The standard of review of a trial court's denial of a posttrial motion for a new trial is abuse of discretion. *In re Leona W.*, 228 Ill. 2d 439, 460 (2008); *Barton v. Chicago & N. W. Transportation Co.*, 325 Ill. App. 3d 1005, 1026 (2001). Additionally, the trial court's evidentiary rulings will not be overturned on review absent a clear abuse of discretion. *Leona W.*, 228 Ill. 2d at 460; *Simmons v. Garces*, 198 Ill. 2d 541, 567-68 (2002). The threshold for finding an abuse of discretion is high and a trial court will not be found to have abused its discretion with respect to an evidentiary ruling unless it can be said that no reasonable man would take the view adopted by the court. *Leona W.*, 228 Ill. 2d at 460. In order to warrant reversal of the trial court's evidentiary rulings, the error must have been substantially prejudicial and affected the outcome of the case. *Id.*; *Simmons*, 198 Ill. 2d at 567-68.

¶ 60 The case law provides that, when a party seeks to exclude certain evidence by filing a motion *in limine*, a party must also object to the introduction of the evidence at issue during the trial itself, after an unfavorable pretrial ruling, and the failure to object can result in forfeiture. *Simmons*, 198 Ill. 2d at 569. "When a motion *in limine* is denied, a contemporaneous objection to the evidence at the time it is offered is required to preserve the issue for review." *Simmons*, 198 Ill. 2d at 569, quoting *Brown v. Baker*, 284 Ill. App. 3d 401, 406 (1996). Here, the court granted portions of some of the motions *in limine*, denied some, and reserved ruling on some or part of them but, in most instances, not only did plaintiff not raise the appropriate objections during the jury trial, but plaintiff's own witnesses, in her case-in-chief, testified to Mr. Shaffer's pre-existing conditions as well as whether it was appropriate to wait for Dr. Bokhari to consult with Mr. Shaffer at Iroquois Hospital on March 7, without moving to strike any of that testimony.

Accordingly, plaintiff's failure to contemporaneously move to strike or object to testimony regarding Mr. Shaffer's pre-existing conditions has forfeited plaintiff's right to raise this issue on appeal. See *Simmons*, 198 Ill. 2d at 569.

¶ 61 On appeal, plaintiff contends the evidence that Dr. Bokhari was scheduled to be at Iroquois Hospital on March 7, 2000, was based on unreliable double hearsay and should have been excluded. See *Hallowell v. University Of Chicago Hospital*, 334 Ill. App. 3d 206, 211 (2002). Plaintiff filed a motion *in limine* seeking to prevent anyone from informing the jury that Dr. Bokhari was scheduled to be present at the hospital on March 7. The court denied the motion *in limine* and, after the posttrial motion, found the testimony was offered to show the doctor's state of mind and was not offered to prove the truthfulness of the statement regarding whether the doctor would be present for a gastroenterologist consultation on March 7.

¶ 62 Thus, defendants claim this hearsay issue has also been forfeited for purposes of this appeal. We agree. Plaintiff raised this issue in a motion *in limine*, but failed to contemporaneously move to strike that testimony of Dr. Florido which was presented during her case-in-chief. Plaintiff's experts testified to and relied on this information to determine whether Dr. Florido deviated from the appropriate standard of care by waiting for Dr. Bokhari to conduct a gastrointestinal consultation on March 7, 2000, rather than to transport Mr. Shaffer to a gastroenterologist on March 6, 2000. Therefore plaintiff opened the door for others to testify about Dr. Bokhari's anticipated availability for a gastrointestinal consultation. See *Simmons*, 198 Ill. 2d at 569.

¶ 63 Additionally, the information was relevant to and addressed the doctor's state of mind when developing a treatment plan for his patient. We agree Dr. Florido's statement regarding Dr.

Bokari's schedule was not offered to prove the truth of the assertion that Dr. Bokhari would be present at the hospital on March 7, 2000. Rather, the testimony established that Dr. Florido relied on the information provided by the hospital staff and formed a reasonable belief that a gastroenterologist would be arriving the next day to provide a consultation and to assist him in the determination of a course of treatment for Mr. Shaffer. Therefore, since the statement was not offered for the truth of the matter asserted, we conclude the statement qualified as a state of mind exception to the hearsay rule and did not constitute hearsay. See *Agins v. Schonberg*, 397 Ill. App. 3d 127, 136 (2009).

¶ 64 Plaintiff also requests a new trial because the trial court allowed the defense to expound on plaintiff's pre-existing conditions. Plaintiff contends the "lost chance doctrine," as discussed in the *Holton* case (*Holton v. Memorial Hospital*, 176 Ill. 2d 95 (1997)), applies to this case. Plaintiff argues Mr. Shaffer's pre-existing conditions were not relevant to Dr. Florido's failure to correct Mr. Shaffer's last serious medical condition, the bleeding ulcer, which proximately caused Mr. Shaffer's death and denied the patient a chance for survival or recovery. Plaintiff argues, the admission of the "surfeit of evidence" about Mr. Shaffer's conditions, independent from his bloody stools and hemorrhaged stomach ulcer, allowed the jury to consider whether Mr. Shaffer might have died anyway from various other serious and pre-existing medical conditions, and the jury could fault Mr. Shaffer aggravating his condition by not properly following the medical advice to control his diabetes by keeping his blood sugars lower. According to plaintiff, this type of evidence should not be allowed by the trial court under the "lost chance doctrine" detailed in *Holton*. *Holton*, 176 Ill. 2d 95.

¶ 65 However, plaintiff's complaint and the testimony provided by plaintiff's experts, during

her case-in-chief, involved a discussion about Dr. Florido's care and treatment of Mr. Shaffer, regarding these pre-existing conditions from February 29 through March 7, 2000. Further the plaintiff's experts opined they found the treatment was appropriate until the time when Dr. Florido decided to forego transporting Mr. Shaffer by ambulance to a larger hospital for a gastroenterologist consultation, in the early evening hours on March 6, 2000, because Mr. Shaffer was not yet stable, rather than waiting for the gastroenterologist to come to Iroquois Hospital to examine the patient on March 7, the day after Mr. Schaffer was admitted to the ICU.

¶ 66 Experts for both parties discussed Mr. Shaffer's pre-existing conditions including cerebral palsy, temporal arteritis, uncontrolled diabetes, chronic insufficiency of kidney function, high blood pressure, headaches, pneumonia, and anemia of chronic disease and how these conditions factored into, or did not factor into, the medical treatment for Mr. Shaffer's undisputed bleeding ulcer that eventually hemorrhaged and resulted in his death around 6:30 a.m. on March 7, 2000. In particular, plaintiff's expert, Dr. Solny, discussed that the lab results from March 1, 2000, "were notable for" anemia, abnormal kidney function, and a high white blood count indicating a possible infection or inflammation," and whether hospitalization should have occurred at that time. Dr. Florido treated some of these conditions before Mr. Shaffer's hospitalization. Plaintiff's experts also testified these medications were appropriately prescribed, but both these medications increased the risks of gastric bleeding, making it relevant to discuss the conditions which caused Dr. Florido to prescribe these medications.

¶ 67 Upon admission to the hospital on March 6, 2000, the newly-discovered bloody stools had to be considered and factored into the "resuscitative treatment" and on-going treatment by Dr. Florido. Both parties' experts agreed Dr. Florido's resuscitative treatment of Mr. Shaffer, for

the low blood pressure and high blood sugar, were appropriate and within the proper standard of care, as well as his continued treatment for the pneumonia. The only contested issue surrounding Dr. Florido's standard of care involved his decision that Mr. Shaffer was not stable enough, on the evening of March 6, 2000, to transport by ambulance to another hospital with a gastroenterologist, and to wait for the gastrointestinal consult at Iroquois Hospital the next day.

¶ 68 After a thorough review of the evidence, we conclude the evidence regarding Mr. Shaffer's pre-existing conditions was relevant to the case at bar and Dr. Florido's decisions surrounding Mr. Shaffer's diagnoses and treatment between February 29 and March 7, 2000. Further, the questions and responses regarding his pre-existing conditions did not unfairly emphasize Mr. Shaffer's other medical conditions solely for the unfairly prejudicial purpose of suggesting to the jury that Mr. Shaffer might have died anyway. Therefore, the court did not abuse its discretion by allowing the admission of this evidence or denying plaintiff's posttrial motion on that ground.

¶ 69

#### **CONCLUSION**

¶ 70 For the foregoing reasons, we conclude the trial court did not abuse its discretion by denying plaintiff's posttrial motion for a new trial.

¶ 71 Affirmed.