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2014 IL App (3d) 130089-U

Order filed January 21, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

LUCY McDERMOTT, Administrator of the Estate of KENNETH McDERMOTT, deceased,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Plaintiff-Appellant,)	
)	
v.)	Appeal No. 3-13-0089
)	Circuit No. 08-L-593
SAMIR SHARMA, M.D., and PAIN & SPINE INSTITUTE, LLC, an Illinois Corporation,)	Honorable
)	Susan T. O'Leary,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* In a wrongful death case, a jury returned a general verdict in favor of the doctor and the medical group. On appeal, the appellate court affirmed because the plaintiff did not file a report of proceedings with the record, which prevented the appellate court from reviewing the plaintiff's allegations of error.
- ¶ 2 The plaintiff, Lucy McDermott, filed a wrongful death action against the defendants, Dr. Samir Sharma and the Pain & Spine Institute, LLC, after the death of Lucy's husband, Kenneth McDermott. After a trial, the jury found in favor of the defendants, and the plaintiff appealed.

On appeal, the plaintiff argues that the circuit court erred when it: (1) allowed the defendants to file an affirmative defense after the start of trial; (2) denied her motion to strike the affirmative defense; (3) allowed the defendants to withdraw their affirmative defense after the proofs were closed; (4) failed to instruct the jury on comparative negligence; (5) failed to instruct the jury to disregard certain prejudicial evidence; and (6) denied her motion for a mistrial. We affirm.

¶ 3

FACTS

¶ 4 On July 18, 2008, the plaintiff filed a four-count wrongful-death action against the defendants based on their alleged negligence with regard to the care of her husband, Kenneth. The complaint alleged, *inter alia*, that the defendants prescribed dangerous combinations of drugs to Kenneth and failed to properly monitor him, thereby causing him pain and suffering until his death on October 24, 2007.

¶ 5 On November 10, 2008, the defendants filed an answer to the complaint in which they denied the plaintiff's allegations. The answer contained no affirmative defenses.

¶ 6 The circuit court held a jury trial in this case beginning on September 10, 2012. The defendants were granted leave to file an affirmative defense of comparative negligence. The plaintiff's motion to strike the defendants' affirmative defense was taken under advisement, and evidence was heard on September 11-13, 2012, before the court denied the plaintiff's motion to strike. Further evidence was heard on September 14, 2012. Also on that day, over the plaintiff's objection, the court granted the defendants' oral motion to withdraw their affirmative defense. The court also denied the plaintiff's oral motion to strike all testimony regarding missing pills.

¶ 7 On September 18, 2012, the parties presented their closing arguments, and the jury later returned a general verdict in favor of the defendants.

¶ 8 The plaintiff filed a posttrial motion, which included, *inter alia*, a motion for a new trial. After the circuit court denied that motion, the plaintiff appealed.

¶ 9 With the exception of two short excerpts of opening and closing arguments, the plaintiff has not included a report of proceedings on appeal.

¶ 10 ANALYSIS

¶ 11 On appeal, the plaintiff presents six arguments. First, she argues that the circuit court erred when it allowed the defendants to file an affirmative defense after the start of trial. Specifically, she argues that the defendants knew of the missing pills since July 2009 and lacked an adequate reason for failing to raise the affirmative defense prior to the beginning of the trial. The plaintiff also argues that the court's decision to allow the affirmative defense was highly prejudicial to the presentation of her case, which was predicated in part upon the defendants not presenting any affirmative defenses.

¶ 12 Second, the plaintiff argues that the circuit court erred when it denied her motion to strike the affirmative defense. Specifically, she argues that the defendants failed to prove at trial that Kenneth was negligent in taking his medication.

¶ 13 Third, the plaintiff argues that the circuit court erred when it allowed the defendants to withdraw their affirmative defense after the proofs were closed. Specifically, she argues that the jury heard extensive evidence at trial regarding missing pills and Kenneth's conduct such that it was "reasonable to assume" that the jury assumed that Kenneth took the missing pills, which prejudiced her case.

¶ 14 Fourth, the plaintiff argues that the circuit court erred when it failed to instruct the jury on comparative negligence. Specifically, she argues that despite the fact that the court allowed the

defendants to withdraw their affirmative defense, the court was required to instruct the jury on comparative negligence so that it knew it could compare the relative faults of Kenneth and the defendants.

¶ 15 Fifth, the plaintiff argues that the circuit court erred when it failed to instruct the jury to disregard certain prejudicial evidence. Specifically, she argues that the court should have instructed the jury to disregard the missing-pills evidence because it had no established link to Kenneth's death. Further, she argues that both the missing-pills evidence and any other evidence related to Kenneth's negligence should have been stricken by the court once the affirmative defense was withdrawn, and the jury should have been instructed accordingly.

¶ 16 Sixth, the plaintiff argues that the circuit court erred when it denied her motion for a mistrial. Specifically, she argues that the cumulative effect of the court's errors severely prejudiced her and denied her a fair trial.

¶ 17 It is the appellant's burden to present the reviewing court with a sufficiently complete record on appeal to support his or her claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Illinois Supreme Court Rule 323(a) (eff. Dec. 13, 2005) provides that "[t]he report of proceedings shall include all the evidence pertinent to the issues on appeal."

¶ 18 With the exception of two short excerpts from opening and closing arguments, the plaintiff has not provided this court with a report of proceedings from the jury trial held in this case, despite the fact that the jury returned a general verdict in favor of the defendants and despite the fact that the plaintiff's arguments on appeal all pertain to matters that transpired in court during trial. The record the plaintiff has presented to this court on appeal is inadequate to review her claims of error. Accordingly, we presume that the circuit court's rulings had adequate

bases and conformed with the applicable law. *In re Marriage of Gulla*, 234 Ill. 2d 414, 424 (2009).

¶ 19

CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 21 Affirmed.