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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JUDITH ZURAWSKI,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 13 L 12539
)	
NANCY CHURCH, M.D., NANCY CHURCH,)	
M.D., LLC, and WELLNESS CONNECTIONS,)	
LLC,)	The Honorable
)	Lorna Propes,
Defendants-Appellees.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on a jury verdict in favor of defendants in medical malpractice case and order denying motion for a judgment notwithstanding the verdict or a new trial affirmed where the appellant failed to submit a sufficient record on appeal for this court to review the issues presented.
- ¶ 2 Judith Zurawski sued defendants, Nancy Church, M.D. and her corporate principals, for medical negligence and failure to obtain informed consent. After the entry of judgment on a jury

verdict in defendants' favor and the trial court's denial of plaintiff's post-trial motion for a judgment notwithstanding the verdict or for a new trial, Zurawski appeals, arguing that the jury's verdict went against the manifest weight of the evidence and that several of the trial court's evidentiary rulings were in error. Because the appellant has failed to submit a sufficient record on appeal for this court to review the issues presented, we affirm.

¶ 3

BACKGROUND

¶ 4

Plaintiff, Judith Zurawski, filed a complaint alleging medical malpractice against defendants, Nancy Church, M.D., Nancy Church, M.D., LLC, and Wellness Connections, LLC. Zurawski alleged Dr. Church negligently performed a surgical procedure known as a supracervical vaginal hysterectomy with bilateral salpingo-oophorectomy (hysterectomy) on January 17, 2007. (Zurawski first filed a complaint on August 8, 2008. On October 6, 2011, she voluntarily dismissed that complaint with leave to refile, which she did on November 17, 2011.) Zurawski alleged that Dr. Church negligently performed the hysterectomy, which Zurawski contends was unnecessary and failed to properly treat a post-surgery infection. Zurawski also alleged Church failed to obtain informed consent before operating on her. Zurawski alleged Church's negligence caused pain and suffering and resulted in numerous surgical procedures to heal injuries she incurred during the hysterectomy. Defendants argued that Dr. Church complied with the standard of care in making her medical judgments relative to the scope of the hysterectomy and her surgical techniques and that Zurawski was fully informed of the risks and alternatives to the procedure.

¶ 5

Before trial, defendants sought an order *in limine* to bar Zurawski from referencing the length of time Dr. Church took to complete medical school, Dr. Church's initial failure of the board examination, and the number of times Dr. Church took the exam before passing. Zurawski

filed a written response to defendant's motion *in limine*. The trial judge advised the parties she was reserving its ruling on the motion and that her decision would depend on whether the defense presented Dr. Church's credentials and opinions in a manner that emphasized her certified status.

¶ 6 Zurawski also filed motions *in limine* arguing that defendants should not be allowed to cross-examine Zurawski about a herniated disc injury she sustained in 2001 that required surgery, a 2002 automobile accident that resulted in nerve injury and a diagnosis of complex regional pain syndrome, and a 2000 work injury, to show that Zurawski's physical complaints stemmed from something other than the hysterectomy. The court ruled that the defense would be allowed to cross-examine Zurawski regarding her prior medical history only to the extent she testified at trial to the same physical complaints.

¶ 7 On the last day of her case, Zurawski produced, for the first time, a copy of her prescription printout from Walgreen's. Zurawski's counsel said he intended to use the document during his cross-examination of Dr. Church to establish that she had prescribed an antibiotic for Zurawski as evidence that Zurawski had an infection when she left the hospital after the surgery. Defendant objected on the grounds that Zurawski had not disclosed this document during discovery, and the trial court barred the use of the prescription printout under Illinois Supreme Court Rule 213 (eff. Jan. 1, 2007). The court also ordered the defense not to make further reference to the absence of an antibiotics prescription and allowed Zurawski to cross-examine defense expert, Dr. Pfister, as to whether Zurawski was taking an antibiotic at the time of her post-operative visit to Dr. Church.

¶ 8 The case proceeded to trial, and on July 1, 2013, a jury returned a verdict in favor of defendants and against Zurawski. After the trial court entered a judgment on the jury verdict,

Zurawski filed a motion for judgment notwithstanding the verdict or, in the alternative, motion for a new trial. In her motion, Zurawski argued, in part, that: (i) prejudice by the trial court's failure to rule on its motion *in limine* regarding the number of times Dr. Church took the board examination before passing; (ii) error by the trial court in permitting argument suggesting that Zurawski's prior surgical procedures could have resulted in a plastic foreign object later found insider her; (iii) prejudice by the trial court's refusal to allow her attorney to question Dr. Church about an antibiotic she prescribed for Zurawski; (iv) prejudice by the trial court's decision to allow defense counsel to question her about her medical history, including a cervical disc injury, a car accident, and a work accident, to show that her back pain and other symptoms preceded the hysterectomy and (v) the jury's verdict was against the manifest weight of the evidence.

¶ 9 The trial court denied the motion on November 26, 2013. The court found: (i) Zurawski waived her objection to the trial court's deferral on her request to question Dr. Church about the number of times Church took the board examination before passing it by not raising it when calling Church as an adverse witness or during cross-examination in defendant's case; (ii) this line of questioning was proper because defense counsel never suggested Church performed well on the board examination but only that she had passed it; (iii) Zurawski's testimony about two prior surgeries—a back surgery in 2005 or a hernia surgery in 2007—properly admitted as circumstantial evidence for the jury to consider in deciding whether the foreign substance found inside the Zurawski may have been there before the hysterectomy; (iv) Zurawski was properly prohibited from questioning the defendant about whether she prescribed antibiotics for Zurawski after the surgery due to Zurawski having failed to produce the Walgreen's printout during discovery and raising it during trial; and (v) the defense was properly allowed to cross-examine Zurawski about a 2001 herniated disc injury and surgery, a 2002 automobile accident, and an

injury she sustained at work in 2000, because Zurawski had introduced those subjects and the prior injuries related to the extent of Zurawski's damages, if any, from defendant's alleged negligence and that any objections went to weight and not admissibility.

¶ 10 On December 19, 2013, Zurawski filed a notice of appeal arguing: (1) prejudice in that the trial court failed to rule on her motion *in limine* regarding cross-examination of defendant about the number of times she took the board examinations; (2) prejudice in that the trial court refused to allow questioning of defendant about antibiotics prescribed to Zurawski; (3) error in that the trial court allowed defendants to argue that foreign material found in Zurawski may have been from a prior surgical procedures; (4) abuse of discretion in that the trial court permitted the defense to cross-examine Zurawski about her medical history, including a 2001 herniated disc injury and back surgery, injuries from a 2002 car accident and a 2000 work accident, and premenopausal symptoms dating back to 2004; and (5) error in that the trial court denied her motion for a judgment notwithstanding the verdict. Zurawski asks us to reverse the trial court order entering judgment on the jury verdict and the order denying her post-trial motion and remand for a new trial.

¶ 11 ANALYSIS

¶ 12 Zurawski's appeal centers around her assertion that the jury verdict went against the manifest weight of the evidence and that the trial court erred in ruling on numerous evidentiary issues. But, she has failed to provide a transcript of the record of proceedings so we can determine whether the evidence the jury heard supports its verdict and whether the trial court's rulings on evidentiary issues were sound. Meaningful appellate review is stymied without a trial transcript or a statement of the evidence.

¶ 13 The Illinois Supreme Court “has long held that in order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record.” *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). “In fact, ‘[f]rom the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant.’ ” *Id.* (quoting *Foutch*, 99 Ill. 2d at 391). “Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding.” *Id.* “Instead, absent a record, ‘it [is] presumed that the order entered by the trial court [is] in conformity with the law and had a sufficient factual basis.’ ” *Id.* (quoting *Foutch*, 99 Ill. 2d at 392).

¶ 14 In *Webster*, the trial court granted the defendant's motion to enforce a settlement agreement against the plaintiff and dismissed the plaintiff's cause of action with prejudice. *Id.* at 428. The plaintiff appealed *pro se*. *Id.* at 431. The Illinois Supreme Court noted that the record on appeal contained no transcript of the hearing on the defendant's motion to enforce settlement, no report of proceedings, no bystander's report, and no agreed statement of facts. *Id.* at 433. In addition, the plaintiff did not file a response to the defendant's motion to enforce settlement or a motion to reconsider the order granting that motion. *Id.* The court noted that it knew only that on December 7, 1998, counsel for both parties were present and that the cause was called for hearing on the defendant's motion to enforce settlement. *Id.* The court noted that it did not know what evidence or arguments had been presented at that hearing; nor did it know the basis for the trial court's decision. *Id.* The court noted that it did know, however, that the trial court granted the defendant's motion. *Id.* Under these circumstances, the court presumed that the trial court

heard adequate evidence to support its decision and that its order granting the defendant's motion to enforce settlement conformed with the law. *Id.* at 433-34.

¶ 15 Similarly, in *Skaggs v. Junis*, 28 Ill. 2d 199 (1963), the Illinois Supreme Court rejected the argument that absent a record of a hearing, an appellate court should presume the trial court heard no evidence. Instead, the court held that “it is presumed that the court heard adequate evidence to support the decision that was rendered” unless the record indicates otherwise. *Id.* at 201-02.

¶ 16 From our review of the appellate submissions and the record, it is evident that issues relating to whether the evidence supported the jury's verdict and the basis for the trial court's evidentiary rulings cannot be reviewed for error without a sufficient record of those proceedings. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). We cannot assume the circumstances of the trial court's rulings and the intent of the trial court in entering its orders on the basis of the parties' speculation and opposing versions of the events. *Webster*, 195 Ill. 2d at 435. Although Zurawski has included a transcript from the post-trial hearing on her motion for a judgment notwithstanding the verdict, she has not provided a record of the evidence presented to the jury or the arguments made in pre-trial motions or during the trial regarding admissibility of evidence. All of the issues Zurawski raises center around what occurred during the trial. In her brief, she contends the trial court erred in permitting defendants to make certain arguments through their witnesses and in restricting her attorney from questioning Dr. Church about why she prescribed antibiotics. She also contends she was prejudiced by the trial court's decision to permit the defendants to cross-examine her about her medical history. But, she fails to present the transcript from the trial to help us determine the basis for the trial court's evidentiary rulings and whether she likely was prejudiced. Accordingly, without a sufficient record from which to

review the claimed errors, we have no basis to determine that jury's verdict was not supported by the evidence or that the trial court erred in its rulings. Under these circumstances, we presume that the jury heard adequate evidence to support its decision and that the trial court's evidentiary rulings were legally sound. See *Webster*, 195 Ill. 2d at 433-34; *Foutch*, 99 Ill. 2d at 392; *Skaggs*, 28 Ill. 2d at 201-02.

¶ 17 The judgment of the circuit court in defendants' favor is affirmed.

¶ 18 Affirmed.