

2015 IL App (2d) 121258-U  
No. 2-12-1258  
Order filed February 24, 2015

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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PHH ARVAL INC., subrogee of Comcast Corporation and Christopher Morgan,	)	Appeal from the Circuit Court of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10- SC-7466
	)	
BRIDGET LARACUENTE,	)	Honorable
	)	Wallace B. Dunn,
Defendant-Appellant.	)	Judge, Presiding.

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BRIDGET LARACUENTE,	)	Appeal from the Circuit Court of Lake County.
	)	
Counter-Plaintiff,	)	
	)	
v.	)	No. 10- L-913
	)	
COMCAST CORPORATION and CHRISTOPHER MORGAN,	)	Honorable
	)	Wallace B. Dunn,
Counter-Defendants.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices McLaren and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The issue of whether the repair bill was admissible is waived. Plaintiff's evidence was sufficient to prove proximate cause and its damages, and therefore, the trial

court properly denied defendant's motions for directed verdict and judgment *n.o.v.* It was proper for the trial court to deem defendant's prior conviction admissible because the probative value of allowing the jury to assess witness credibility outweighed any potential prejudice; defendant addressed her prior conviction on direct examination and was thus able to mitigate potential prejudice. The filing fees awarded to plaintiff as prevailing party were within the trial court's discretion. We affirmed the judgment of the trial court.

¶ 2 In August 2010, plaintiff, PHH Arval, Inc., as subrogee of Comcast Corporation and Christopher Morgan, filed a complaint against defendant, Bridget Laracuenta, seeking to recover property damages it had paid to Comcast following an automobile collision between defendant and Morgan. Later, defendant filed a counterclaim against Comcast and Morgan for personal injuries sustained in the same accident; the trial court consolidated the cases. After plaintiff presented its case with respect to property damage, defendant moved for a directed verdict; the trial court denied defendant's motion, and defendant presented its case. Thereafter, a jury rendered a verdict in favor of plaintiff, awarding it \$5,811.03, but also finding it 10% contributorily negligent, thus reducing plaintiff's award to \$5,229.93. The jury also returned a verdict in favor of Comcast and Morgan on defendant's claim. Defendant filed a timely posttrial motion, which the trial court denied. At a later hearing, detailed below, the trial court awarded PHH Arval and Comcast \$619 in filing fees as the prevailing party.

¶ 3 On appeal, defendant presents the following issues: whether the trial court erred when it denied her motion for directed verdict and allowed into evidence a repair bill; whether plaintiff proved proximate cause and damages; whether the trial court's failure to limit the testimony of witness Morgan was an abuse of discretion; and whether the trial court abused its discretion when it assessed the expenses of Morgan's video deposition evidence to be charged to defendant as "costs of Court." We affirm.

¶ 4

## I. BACKGROUND

¶ 5 This case stems from an automobile accident between defendant and Morgan, a driver formerly employed by Comcast. On August 29, 2008, defendant's vehicle collided with a van driven by Morgan, owned by Comcast, and insured by plaintiff. As a result of the accident, defendant allegedly sustained injuries to her head, and the Comcast van allegedly sustained damage. The parties disputed which driver had a green light at the intersection where the accident occurred, and thus, which driver was liable for causing the accident.

¶ 6 On August 11, 2010, plaintiff, as subrogee of Comcast, filed a tort action against defendant seeking to recover \$7,188.19 for the property damage the Comcast van sustained in the accident. On September 21, 2010, defendant filed a jury demand. On September 24, 2010, defendant requested leave to file a personal injury counterclaim, which the trial court granted. Comcast filed an answer, disputing liability for the accident.

¶ 7 On February 3, 2011, Comcast moved for a stay because Morgan was on active military duty and was stationed in Japan for a five-year enlistment; the trial court denied Comcast's motion. Defendant filed a motion for a protective order regarding any evidence deposition of Morgan because Comcast indicated that it would, instead, take Morgan's deposition by video from Japan. In her request, defendant asked that Morgan refrain from taking his deposition in full military uniform, referring to his military service, and explaining why he was not physically present at trial. Comcast objected to the motion, arguing that counsel would ask Morgan about his military background only for the purpose of providing the jury with an accurate basis upon which to assess his credibility as a witness. The trial court indicated that there would be no restrictions on the evidence deposition of Morgan. Defendant filed a motion to bar the use of her nine-year-old felony conviction at trial; the trial court denied the motion. The cases were consolidated and tried together.

¶ 8 At trial, Aran Spence<sup>1</sup> testified that he was employed by Comcast as a fleet manager. Spence explained that his duties included ensuring that Comcast's service technicians had safe and serviceable vehicles. He testified that he was responsible for ensuring that damaged vehicles were repaired. He testified that he made arrangements for the vehicle Morgan was driving on the day of the accident to be repaired. He testified that Morgan's vehicle was repaired at the Chevrolet body shop. Upon reviewing the paid repair bill for trial, Spence noticed a discrepancy. Specifically, he noticed that expenses for a repair done to an unrelated vehicle were included in the bill. Spence testified that once the repairs to the unrelated vehicle were subtracted, the repair bill for the Comcast vehicle involved in the accident came to \$5,811.03. Plaintiff's counsel moved to have the repair bill admitted into evidence. With no objection, the trial court admitted the repair bill.

¶ 9 On cross-examination, Spence admitted that, although the vehicle was inspected by PHH Arval on September 3, 2008, and estimated to cost \$4,825.64 to repair, the repairs were not completed until January 30, 2009. Spence further admitted that \$833 of the estimate was for the repair of prior damage to the vehicle that was unrelated to the accident. Spence admitted that the prior damage to the vehicle had gone unreported and he did not know when or how the prior damage occurred. On redirect, Spence testified that the repair of the prior damage to the vehicle was not charged on the final bill.

¶ 10 The videotaped deposition of Morgan was played for the jury. In the video, Morgan appeared in his military uniform. He explained that he was in Japan and had been serving in the Navy since September 2009; he explained that he was unable to testify live because of his service. Morgan testified that he was a Hospital Corpsman in charge of a fighter squadron of jet

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<sup>1</sup> Witness Aran Spence is not related to Justice Spence.

pilots. Morgan testified that, when he was employed at Comcast, he regularly drove the same van. He testified that, on the day of the accident, he had a green light when he and defendant collided in the intersection. He further testified that defendant's vehicle hit the Comcast van at the front right wheel and door area toward the van's side.

¶ 11 At the close of plaintiff's case, defendant moved for a directed verdict, arguing that there was no evidence of proximate cause because none of the witnesses had offered any evidence regarding the condition of the van before the accident occurred. The trial court denied the motion, finding that Spence testified regarding the condition of the van before the accident including prior damage to the vehicle.

¶ 12 Defendant testified on her own behalf. Defendant testified that she had a prior felony conviction from 9 years and 11 months prior. She testified that she received the felony conviction because she had used her uncle's and brother's checking account to pay her phone bill without their consent. She testified that she pleaded guilty and paid restitution. Defendant then testified regarding the accident. She testified that she had the green light when the vehicles collided. She also testified that she was injured as a result of the accident. Defendant received 20 sutures and 11 staples to her head and now had a scar that her hair partially covered.

¶ 13 Defendant next called plastic surgeon, James Schuetz, M.D., who testified that he could "narrow the scar" but that defendant's case may require multiple surgeries. Defendant rested.

¶ 14 During closing arguments, plaintiff's counsel argued that credibility and believability were important in deciding the matter. Defense counsel argued that Morgan's overseas service had nothing to do with the accident. On rebuttal closing argument, plaintiff's counsel agreed with defense counsel regarding Morgan's presence overseas and the accident. Following deliberations, the jury entered a verdict in favor of plaintiff and against defendant on plaintiff's

claim and awarding it \$5,811.03, but also finding it 10% contributorily negligent. Plaintiff was thus awarded \$5,229.93 in damages. The jury also returned a verdict in favor of Comcast and against defendant on her counterclaim.

¶ 15 Following the jury verdict in favor of plaintiff, defendant filed a timely motion for judgment notwithstanding the verdict (*n.o.v.*), which, on September 5, 2012, the trial court denied. On September 20, 2012, plaintiff filed a motion for costs. On September 24, 2012, defendant filed her notice of appeal. On October 11, 2012, plaintiff filed a motion to dismiss the appeal, arguing that it was premature due to its pending motion for costs in the trial court. We granted the motion to dismiss appeal.

¶ 16 On October 18, 2012, the trial court entered an order on the motion for costs stating, “the court declines to rule on the amount of recoverable costs due to the pending appeal. The movants have leave to renew their petition for a determination of the recoverable costs after the resolution of the pending appeal.” On November 16, 2012, defendant filed a new notice of appeal and this court allowed late notice.

¶ 17 On July 30, 2014, this court remanded the cause to the trial court for the limited purpose of a definitive determination on the September 20, 2012, motion for costs. On remand, the trial court denied the motion for fees and costs associated with Morgan’s evidence deposition, but granted the motion with respect to the fees and costs associated with filing and appearance fees. The trial court awarded plaintiff \$619 in filing fees as the prevailing party.

¶ 18 II. ANALYSIS

¶ 19 In her Argument section of the brief, defendant contends that the trial court “erred when it denied her motion for a directed verdict and allowed a ‘repair bill’ into evidence without sufficient foundation.” Defendant argues that Comcast failed to introduce any evidence of the

condition of the auto before the accident and after the accident. Defendant argues that the inaccuracy of the repair bill resulted in plaintiff failing to prove proximate cause. Defendant concludes that the trial court “erred in allowing the jury to consider property damages without proximate cause and erred in denying the oral and written post trial Motions for a judgment notwithstanding the verdict.” Plaintiff responds that the trial court’s denial of defendant’s motions was proper because defendant did not object to the admissibility of the repair bill during the trial; and it had sufficiently established proximate cause and damages.

¶ 20 Regarding the admissibility of the repair bill; we determine that the challenge is waived. In the present matter, defense counsel did not object to the admissibility of the repair bill at trial. See *Cunningham v. Millers General Insurance Co.*, 227 Ill. App. 3d 201, 206 (1992) (stating that the moving party must contemporaneously object when the evidence is offered or it waives the objection). Here, when plaintiff requested that the repair bill be admitted, the trial court specifically asked defendant whether there was an objection to the admission of the bill and defense counsel responded, “No objection, Judge.” Because defendant failed to object and preserve this challenge, we decline to consider it.

¶ 21 With respect to the remaining portion of defendant’s first issue presented, it appears that defendant is either challenging the trial court’s denial of her motion for directed verdict or the trial court’s denial of her motion for judgment *n.o.v.* Although motions for directed verdicts and motions for judgments *n.o.v.* are made at different times, they raise the same questions and are governed by the same rules of law. *Maple v. Gustafson*, 151 Ill. 2d 445, 453 n. 1 (1992). A directed verdict (735 ILCS 5/2-1202(a) (West 2012)) or a judgment *n.o.v.* (735 ILCS 5/2-1202(b) (West 2012)) is to be entered only when all of the evidence, viewed in the light most favorable to the nonmovant, so overwhelmingly favors the movant that no contrary verdict could

stand based on the evidence. See *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 132 (1999); *Maple*, 151 Ill. 2d at 453; see also *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 502 (1967). In deciding whether to grant such a judgment, the trial court may not reweigh the evidence and set aside the verdict simply because a jury could have drawn different conclusions or inferences from the evidence or because it feels other possible results may have been more reasonable. See *McClure*, 188 Ill. 2d at 132; *Pedrick*, 37 Ill. 2d at 504 (the right of the parties to have a substantial factual dispute resolved by the jury should be “carefully preserve[d]”). A reviewing court may not usurp the role of the jury and substitute its own judgment on factual questions fairly submitted, tried, and determined from the evidence. See *McClure*, 188 Ill. 2d at 132 (reviewing court cannot substitute own judgment on questions of fact and witness credibility, which remain solely within the province of the jury).

¶ 22 Regarding proximate cause, defendant argues that plaintiff failed to prove proximate cause because it failed to offer evidence of the van’s condition before and after the accident. The traditional statement of proximate cause requires plaintiff to prove that defendant’s negligence “more probably than not” caused the damage. See *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 107 (1997). Evidence of proximate cause “must not be contingent, speculative or merely possible, but that there must be such degree of probability as to amount to a reasonable certainty that such causal connection exists.” *Manion v. Brant Oil Co.*, 85 Ill. App. 2d 129, 136 (1967). Liability cannot be predicated upon speculation, surmise, or conjecture as to the cause of the damage. *Schultz v. Hennessy Industries, Inc.*, 222 Ill. App. 3d 532, 540 (1991). Proximate cause can only be established when there is reasonable certainty that the defendant’s acts caused the damage. *Id.*

¶ 23 Here, all parties agree that an accident occurred between the Comcast van driven by Morgan and defendant's vehicle. Morgan testified that the Comcast vehicle was damaged as a result of the collision with defendant's vehicle. Morgan further testified that the right front wheel and door area of the side of the van were hit in the collision. Spence testified that the Comcast van was involved in an accident, sustained damage to the right front side as a result, and was subsequently repaired. Moreover, Spence testified that when he went over the repair bill, he noticed that \$750.66 of the charges were from damages to another vehicle, unrelated to the collision with defendant's vehicle, and should be subtracted from the total. This brought the total cost of the repairs stemming from the collision with defendant's vehicle to \$5,811.03. Through the testimony of Morgan and Spence, a jury could have found that defendant's operation of the vehicle "more probably than not" caused the damages to the Comcast van in the collision. See *Memorial Hospital*, 176 Ill. 2d at 107. The record reflects that plaintiff offered sufficient evidence on the element of proximate cause.

¶ 24 Defendant further argues that plaintiff failed to sufficiently establish the proper measure of damages caused by the accident. Specifically, she asserts that plaintiff's failure to present evidence of the condition of the vehicle before and after the accident was fatal to its damages claim. Plaintiff responds that it properly established its damages for repairable property under Illinois law.

¶ 25 We determine that Comcast provided sufficient evidence of its damages. A reviewing court will not disturb a trial court's findings as to damages unless its measure of damages was erroneous as a matter of law or the trial court ignored the evidence. *Beasley v. Pelmore*, 259 Ill. App. 3d 513, 523 (1994). A plaintiff has the burden of proving damages to a reasonable degree of certainty. *Id.* The standard for assessing damages to repairable property is the reasonable cost

of repairs. *Id.* In assessing damages, the condition and value of the property before the occurrence causing the damages is only relevant when the property is not repairable. See *P.A.M. Transport, Inc. v. Builders Transport, Inc.*, 209 Ill. App. 3d 889, 896 (1991); also see *Kroch's & Brentano's Inc. v. Barber-Colman Co.*, 16 Ill. App. 3d 412, 416 (1974).

¶ 26 Here, the testimony from Spence and the evidence of the repair bill were sufficient for the jury to have properly determined the damages sustained. Spence testified that he ensured the repair of the Comcast van. He testified that repairs for prior damage to the van, unrelated to the accident, were not reflected on the final bill. He further testified that it was necessary to subtract \$750.66 from the final bill to account for damages sustained by an unrelated vehicle. Once this subtraction was made, the final repair bill speaks for itself. Because the testimony of Spence along with the final repair bill were enough to show a reasonable amount of damages to the vehicle, we cannot say the trial court's measure of damages was erroneous as a matter of law or that the trial court ignored evidence. See *Beasley*, 259 Ill. App. 3d at 523. When all of the evidence is considered, together with all reasonable inferences that could be drawn from it, there was not a total failure or lack of evidence to prove the necessary elements of plaintiff's case. See *Lake Forest Hospital*, 315 Ill. App. 3d at 102. Thus, having determined that plaintiff offered sufficient evidence of proximate cause and damages, we conclude the trial court properly denied both defendant's motion for directed verdict and motion for judgment *n.o.v.*

¶ 27 Defendant next contends that the trial court erred when it "allowed Morgan to testify in uniform, allowed detailed questions about his service, and when counsel used these points to such an extent that the whole trial became an issue of 'Felon vs. Military hero.' " Plaintiff counters that the evidence was properly allowed because credibility was an issue to be considered by the jury. We agree with plaintiff.

¶ 28 Regarding Morgan, reviewing courts have held that there is no inherent bias in allowing military personnel to testify in uniform. See *People v. Lane*, 398 Ill. App. 3d 287, 298 (2010). Moreover, any potential bias the jury may harbor towards military personnel can be safe-guarded against by the process of *voir dire*. *Id.* It is also common to allow witnesses to testify regarding their occupations. *Esser v. McIntyre*, 169 Ill. 2d 292, 305 (1996). In this case, it was proper that Morgan be allowed to explain why he was not available to attend the trial in person and to avoid the jury making an incorrect assumption about his absence. Although defendant asserts that remarks made during closing arguments suggested that Morgan was more credible because of his military service, the record does not support that assertion. Here, plaintiff's counsel argued only that Morgan was the more credible witness because he was steady, concise, and accurate in his testimony.

¶ 29 Regarding defendant, the use of prior felonies at trial is determined by a general balancing test. A prior conviction may attack credibility when (1) the crime was punishable by death or imprisonment for more than one year, or the crime involved dishonesty or false statements regardless of the punishment; (2) less than 10 years have elapsed since the conviction; and (3) the probative value of the conviction outweighs the danger of unfair prejudice. *People v. Diehl*, 335 Ill. App. 3d 693, 702 (2002); *People v. Montgomery*, 47 Ill. 2d 510, 514 (1971). This third factor requires the trial court to perform a balancing test, taking into consideration factors such as the nature of the prior offense, its recency and similarity to current matter, the length of the criminal record, and the age and circumstances of the witness. *Id.* Here, defendant's conviction was based upon her action of using relatives' checking accounts to pay her bills without their consent; this is an offense that involved dishonesty in that she led others to believe that she had consent to tender funds. Defendant's conviction occurred within the 10-year time

frame. Although defendant's prior conviction did not involve conduct similar to the present matter, because the crime involved dishonesty and the credibility of defendant was a factor, the trial court could have determined that the probative effect outweighed any prejudice. Moreover, defendant addressed her prior felony on direct examination and was thus able to mitigate potential prejudice.

¶ 30 With respect to issue of credibility, it is the province of the jury to resolve conflicts in the evidence, to pass upon the credibility of the witnesses and to decide what weight should be given to the witnesses' testimony. *Perkey v. Portes-Jarol*, 2013 IL App. (2d) 120470, ¶ 58 (citing *Stapleton v. Moore*, 403 Ill. App. 3d 147, 165 (2010)). In the present case, the trial court was tasked with determining whether to allow evidence of the witnesses' backgrounds. In doing so, the trial court needed to determine whether the probative value of the evidence would outweigh its possible prejudicial effect. The trial court determined that allowing the jury to hear evidence regarding the background of the witnesses, whose testimony conflicted, was permissible. Despite defendant's phraseology of "a military hero versus a convicted felon," we conclude that the jury's verdict should not be set aside. Accordingly, the trial court properly denied defendant's motion for directed verdict and motion for judgment *n.o.v.*

¶ 31 Last, defendant contends that the trial court "abused its discretion in considering all the expenses of video evidence deposition in Japan." At the time defendant presented its brief on appeal to this court, the trial court had not decided this issue. On remand, the trial court declined to award plaintiff fees and costs associated with Morgan's evidence deposition. Therefore, we need not consider this issue. See *Golden Rule Insurance Co. v. Schwartz*, 203 Ill. 2d 456, 469 (2003) (declining to issue an advisory opinion).

¶ 32

### III. CONCLUSION

¶ 33 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 34 Affirmed.