2015 IL App (4th) 140280-U

NO. 4-14-0280

FILED
March 17, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of JACOB LILIENTHAL,	)	Appeal from
Deceased,	)	Circuit Court of
JANE LILIENTHAL, Individually and as Special	)	McLean County
Administratrix,	)	No. 05L34
Petitioner-Appellee,	)	
v.	)	Honorable
ILLINOIS CENTRAL RAILROAD COMPANY,	)	Paul G. Lawrence,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court found the trial court did not err in (1) denying respondent's request for an itemized verdict, (2) instructing the jury, (3) denying the motion for judgment notwithstanding the verdict, and (4) admitting certain evidence.

¶ 2 In February 2005, petitioner, Jane Lilienthal, individually and as special administratrix of the estate of Jacob Lilienthal, filed a complaint against respondent, Illinois Central Railroad Company (Illinois Central or railroad) and other defendants, to recover damages for personal injuries allegedly sustained by Jacob as a result of exposure to asbestos. In June 2013, a jury rendered a verdict for petitioner and against Illinois Central. In March 2014, the trial court entered judgment for petitioner in the amount of $1,357,143.87.

¶ 3 On appeal, Illinois Central argues the trial court erred in (1) denying a request for an itemized verdict, (2) instructing the jury, (3) denying its motion for judgment notwithstanding the verdict, and (4) admitting certain evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Jacob Lilienthal worked as a laborer and machinist for Illinois Central and its predecessor, Gulf, Mobile & Ohio Railroad (GM&O), from 1957 to 1992 at railroad facilities in Bloomington, Illinois (1957 to 1972); Paducah, Kentucky (1972 to 1986); and Homewood, Illinois (1986 to 1992).

¶ 6 In February 2005, Jacob Lilienthal and his wife, petitioner, filed a complaint against Illinois Central and other nonrailroad defendants, seeking damages for the pulmonary fibrosis Jacob allegedly developed from exposure to asbestos. The complaint alleged a claim under the Federal Employers' Liability Act (FELA) (45 U.S.C. §§ 51 to 60 (2000)) and other common-law claims against the nonrailroad defendants. Jacob subsequently developed lung cancer and died in November 2009. Petitioner, as administratrix of her husband's estate, continued to pursue the FELA claim against Illinois Central, alleging Jacob's lung cancer resulted from exposure to asbestos during his work at the railroad.

¶ 7 In June 2013, petitioner's FELA claim against Illinois Central proceeded to a jury trial. Dr. Barry Castleman, a consultant in the field of toxic-substances control, testified to the history of asbestos in various industries, along with studies as to the dangers of its use. As to the railroad industry, Castleman testified to his review of records, including those of proceedings held by the Association of American Railroads beginning in the 1930s. In 1935, a meeting of railroad physicians detailed the ability of asbestos to cause disease and the protective measures that could be used. He thought it was "fair to say that the railroad industry doctors certainly understood what asbestosis was in the 1930s." He had not seen any documentation of any railroad in the 1930s, 1940s, or 1950s telling workers about the hazards of asbestos.

¶ 8 Dr. Arthur Frank, a physician in the area of occupational medicine, testified to the

hazards of asbestos and the potential for asbestos exposure to cause disease, including asbestosis. He stated asbestosis is "a scarring of the lung." Asbestos is a cause of lung cancer, as is cigarette smoking. Dr. Frank agreed cigarette smoking causes chronic obstructive pulmonary disease (COPD).

¶ 9 Charles Garrett, the risk-mitigation manager for Illinois Central, testified to the railroad's corporate history, including its merger with GM&O in 1972. He had not seen any documents from the railroad from the 1930s to the 1970s telling workers about the hazards of asbestos. He believed the railroad was aware of a disease called asbestosis caused by asbestos as early as the mid-1930s but not for railroad workers. Garrett stated his belief that it was in 1958 when the railroad had information that exposure to asbestos could cause lung cancer.

¶ 10 Garrett testified to the different products used by the railroad that may have contained asbestos, including rope, siding, brakes, cements, and insulation. He stated Jacob Lilienthal worked as a laborer in the Bloomington storeroom and as a machinist in Bloomington, Paducah, and Homewood. Although Garrett had no direct knowledge of Jacob's employment duties, he knew Jacob had testified to sweeping in Bloomington. Working in the storeroom, Jacob could have been exposed to asbestos gaskets, cloth, pipe covering, and brakes. As a machinist, Jacob had testified to using gaskets and packing.

¶ 11 Over objection, petitioner's counsel asked Garrett about GM&O's lease of a portion of its Bloomington facilities to Union Asbestos and Rubber Company (UNARCO) starting in 1951. Garrett was not aware of what the railroad knew about UNARCO's planned operation.

¶ 12 Windell Kessinger testified he worked as "a clean-up man" at UNARCO for several months in 1960. He stated boxcars full of bags of asbestos would arrive and, when

broken or opened, dust would "be all over the place." Kessinger stated he would leave work at the end of his shift and find his car with "fibers all over it."

¶ 13 Mike McGowan testified he worked for the railroad in Bloomington from 1959 to 1973, in Paducah from 1973 to 1986, and then in Homewood. He knew Jacob Lilienthal, who worked in the storeroom and delivered gaskets, brake shoes, or oil to the different shops. McGowan worked with asbestos sheets to shield locomotives from heat when using a torch. Cutting the sheets often left dust that was swept up by laborers. He stated the railroad also used asbestos gaskets, brake shoes, cloth, and packings. He saw asbestos brakes, gaskets, and packings in Paducah as well. During his employment, the railroad never gave him any information that asbestos could be harmful to his health. On cross-examination, McGowan testified Jacob smoked during his career and in his retirement.

¶ 14 Dr. William Houser, a lung specialist, testified he evaluated Jacob Lilienthal in 2003 at the request of his attorneys. At that time, when Jacob was 64 years old, he complained about being short of breath for several years. Jacob told Dr. Houser that he had smoked "generally one pack per day" for 45 years. Jacob also told Dr. Houser about his work at the railroad, including his work with asbestos gaskets and insulation. Dr. Houser opined Jacob had severe COPD caused by cigarette smoking and exposure to respirable dust from his railroad employment. He also opined Jacob's exposure to asbestos during his railroad employment was a cause of his lung cancer.

¶ 15 Robert Winstead, a former GM&O employee, testified he recalled seeing dust from the neighboring UNARCO facility blowing around the railyard during the 1950s and 1960s. During his employment, Winstead never directly worked with materials containing asbestos.

¶ 16 Following the close of petitioner's case, defense counsel moved for a directed

verdict, which the trial court denied. For the defense, Duane Amato, a certified industrial hygienist, testified to industrial hygiene standards applicable during Jacob Lilienthal's employment at the railroad, including the recommended threshold limit value (TLV) and permissible exposure limit (PEL) for exposure to asbestos. He opined that general industry should have known in 1955 that there was an increased risk of lung cancer associated with asbestos. He also stated 1950s asbestos manufacturers advertised their products as nontoxic and safe for workers. He stated the retirement of the steam locomotive in the 1950s and 1960s greatly reduced the use of asbestos in the railroad industry. Amato testified regarding industrial-hygiene surveys conducted in the early 1980s at various Illinois Central facilities, including Paducah, which found no unsafe levels of asbestos. Based on all relevant facts, Amato opined Jacob's claimed exposures to asbestos "would have never exceeded any TLV or PEL at any time." He also gave his opinion to a reasonable degree of certainty in the field of industrial hygiene that GM&O and Illinois Central provided Jacob with a reasonably safe workplace.

¶ 17 The videotaped depositions of Dr. Paul Wheeler and Dr. Lee Sider were played for the jury. Dr. Wheeler, a diagnostic radiologist, testified pneumoconiosis is a "scarring of the lungs caused by inhaling very finely ground microscopic inorganic dusts" such as asbestos. He reviewed Jacob Lilienthal's X-rays and computed tomography (CT) scans and found no evidence of pneumoconiosis. Dr. Wheeler stated the CT scan showed emphysema, which he opined was caused by smoking. Dr. Wheeler also opined Jacob "had no radiographic evidence of asbestosis." While Wheeler's review of the films confirmed a lung mass consistent with lung cancer, he opined there was a "high likelihood" it was related to smoking. Dr. Sider, board certified in diagnostic radiology, testified he reviewed Jacob's X-rays, CT scans, and positron emission tomography scan. Dr. Sider opined Jacob had lung cancer, but he saw no radiographic

evidence consistent with pneumoconiosis.

¶ 18 Dr. Mark Wick, a physician and pathologist, testified he reviewed Jacob Lilienthal's pathology materials and medical records. He found no objective evidence to support the diagnosis of asbestosis. Dr. Wick opined to a reasonable degree of medical certainty that Jacob had COPD and lung cancer, both caused by tobacco smoke inhalation.

¶ 19 At the close of all the evidence, defense counsel renewed his motion for a directed finding, which the trial court denied. Following closing arguments, the jury returned a general verdict for petitioner, awarding $2,625,110.06 in total damages. The jury also found Jacob Lilienthal was 45% contributorily negligent, which reduced the damage award to $1,443,810.43.

¶ 20 In October 2013, Illinois Central filed a posttrial motion for judgment notwithstanding the verdict. In March 2014, the trial court denied the motion. In allowing a setoff of $86,666.66, the court entered judgment for petitioner in the reduced amount of $1,357,143.87. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Itemized Verdict Request

¶ 23 Illinois Central argues the trial court erred in failing to instruct the jury to itemize the verdict as required by section 2-1109 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1109 (West 1994)). We disagree.

¶ 24 Section 2-1109 of the Code provides, in part, as follows:

> "In every case where damages for injury to the person are assessed by the jury the verdict shall be itemized so as to reflect the monetary distribution among economic loss and non-economic loss, if any[.]" 735 ILCS 5/2-1109 (West 1994).

¶ 25 In the case *sub judice*, the jury was instructed that, if it found for petitioner, it must fix the amount of money to compensate for the damages of the loss of normal life experienced by decedent, his pain and suffering, and the reasonable expenses of necessary medical care, treatment, and services received. Petitioner submitted a general verdict form, which allowed the jury to find "the total amount of damages suffered by [petitioner] as a result, in whole or in part, of the occurrence in question" minus any negligence attributable solely to Jacob Lilienthal.

¶ 26 Illinois Central proposed instructions requiring the jury to itemize any damage award to reflect monetary distribution between claimed economic and noneconomic losses. Petitioner objected, stating defense counsel's itemized verdict form failed to include a blank for wrongful-death damages. Defense counsel agreed his tendered forms did not include itemization for wrongful death. Noting that absence, the trial court denied the request for an itemized verdict and gave petitioner's nonitemized verdict forms.

> "A party forfeits the right to challenge a jury instruction that was given at trial unless it makes a timely and specific objection to the instruction and tenders an alternative, remedial instruction to the trial court. [Citation.] These requirements ensure that the trial court has the opportunity to correct a defective instruction and to prevent the challenging party from gaining an unfair advantage by failing to act when the trial court could remedy the faulty instruction and then obtaining a reversal on appeal. [Citation.]" *Mikolajczyk v. Ford Motor Co.*, 231 Ill. 2d 516, 557-58, 901 N.E.2d 329, 353 (2008).

Here, Illinois Central objected to petitioner's proposed verdict forms and tendered forms that itemized loss of normal life, pain and suffering, and medical expenses. However, Illinois Central's itemized form did not contain any language regarding the wrongful death of Jacob Lilienthal. The court noted the absence of the wrongful-death item, but defense counsel did not offer an alternate form to include it. "Failing to tender a proper itemized verdict to the trial court waives review of the issue." *Wheeler v. Sunbelt Tool Co.*, 181 Ill. App. 3d 1088, 1107, 537 N.E.2d 1332, 1345 (1989). Illinois Central's failure to offer itemized verdict forms containing the necessary language forfeits further review of this issue. See *Marek v. Stepkowski*, 241 Ill. App. 3d 862, 870, 608 N.E.2d 285, 290 (1992) (stating "a verdict form which does not require itemization is not so improper that such error cannot be waived").

¶ 27 B. Jury Instructions

¶ 28 Illinois Central argues the trial court erred in giving an instruction on aggravation of a preexisting condition, claiming the instruction was not supported by any evidence. We disagree.

¶ 29 "Each party has the right to have the jury clearly and fully instructed on any relevant theory of the case that is supported by the evidence." *Mikolajczyk*, 231 Ill. 2d at 561, 901 N.E.2d at 355. Our supreme court has noted "it is error to give an instruction not based on the evidence." *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 100, 658 N.E.2d 450, 458 (1995). However, "[a]ll that is required to justify the giving of an instruction is that there be some evidence in the record to justify the theory of the instruction. The evidence may be insubstantial." *Heastie v. Roberts*, 226 Ill. 2d 515, 543, 877 N.E.2d 1064, 1082 (2007). "The trial court has discretion to determine which instructions to give the jury and that determination will not be disturbed absent an abuse of that discretion." *Schultz v. Northeast Illinois Regional*

Commuter R.R. Corp., 201 Ill. 2d 260, 273, 775 N.E.2d 964, 972 (2002).

¶ 30 Initially, we note petitioner claims Illinois Central forfeited this issue by not specifying in its posttrial motion the reason the trial court erred. Under section 2-1202(b) of the Code (735 ILCS 5/2-1202(b) (West 2012)), a posttrial motion "must contain the points relied upon, particularly specifying the grounds in support thereof[.]" Moreover, Illinois Supreme Court Rule 366(b)(2)(iii) (eff. Feb. 1, 1994) states "[a] party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion." The purpose of these rules is not only to afford the trial court an opportunity to review its earlier decisions and correct any alleged errors, but also to prevent litigants "from stating mere general objections and subsequently raising on appeal arguments which the trial judge was never given an opportunity to consider." *Brown v. Decatur Memorial Hospital*, 83 Ill. 2d 344, 349-50, 415 N.E.2d 337, 339 (1980).

¶ 31 In its posttrial motion, Illinois Central argued the trial court erred in giving, over its objection, the jury instruction relating to aggravation of a preexisting condition, claiming "there was no evidence of any injury or damages resulting from the aggravation of a pre-existing condition." Our supreme court has noted "[a]ll that is necessary is a simple, succinct statement of the factual or legal basis for movant's belief that the trial court action was erroneous." *Brown*, 83 Ill. 2d at 350, 415 N.E.2d at 340. Here, Illinois Central's statement of alleged error was sufficient to preserve the issue for review.

¶ 32 On the merits, the trial court considered petitioner's proposed instruction based on Illinois Pattern Jury Instruction, Civil, No. 160.27 (2008), dealing with the measure of damages under FELA for aggravation of a preexisting condition. Following Illinois Central's objection, petitioner's counsel pointed out the "synergistic effect between cigarettes and asbestos" and noted

decedent "was smoking cigarettes about the same time he started with the asbestos." In testifying to the "synergistic effect," Dr. Houser stated, "cigarette smoking is associated with approximately a ten fold increase in risk for lung cancer, and if you combine that with asbestos, it is approximately 50 times." The evidence indicated decedent smoked for 45 years, starting when he was 18 years old. He also started working for the railroad after high school. Dr. Houser noted cigarette smoking causes immediate damage to the lungs.

¶ 33 The trial court found "some evidence" of a preexisting condition. Given the evidence, the jury could have reasonably concluded exposure to asbestos aggravated the health conditions decedent suffered from due to smoking cigarettes. Accordingly, we find the trial court did not abuse its discretion in giving this instruction to the jury.

¶ 34 C. Judgment Notwithstanding the Verdict

¶ 35 Illinois Central argues the trial court erred in denying its motion for judgment notwithstanding the verdict, claiming the evidence established it was not negligent. We disagree.

¶ 36 "A motion for [judgment notwithstanding the verdict] should be granted only when the evidence and inferences therefrom, viewed in the light most favorable to the nonmoving party, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand." *Ries v. City of Chicago*, 242 Ill. 2d 205, 215, 950 N.E.2d 631, 637 (2011) (citing *Maple v. Gustafson*, 151 Ill. 2d 445, 453, 603 N.E.2d 508, 512 (1992)). "[J]udgment *n.o.v.* is inappropriate if 'reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented.' " *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178, 854 N.E.2d 635, 652 (2006) (quoting *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 351, 654 N.E.2d 1365, 1374 (1995)). This court reviews a trial court's decision on a motion for judgment notwithstanding the verdict *de novo*. *Hamilton*

v. Hastings, 2014 IL App (4th) 131021, ¶ 24, 14 N.E.3d 1278.

¶ 37 "In response to mounting concern about the number and severity of railroad employees' injuries, Congress in 1908 enacted FELA to provide a compensation scheme for railroad workplace injuries, pre-empting state tort remedies." *Norfolk Southern Ry. Co. v. Sorrell*, 549 U.S. 158, 165 (2007). In doing so, " 'Congress crafted a federal remedy that shifted part of the "human overhead" of doing business from employees to their employers.' " *Wilson v. Norfolk & Western Ry. Co.*, 187 Ill. 2d 369, 373, 718 N.E.2d 172, 174 (1999) (quoting *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 542 (1994)); see also *Wilkerson v. McCarthy*, 336 U.S. 53, 68 (1949) (Douglas, J., concurring) (stating FELA "was designed to put on the railroad industry some of the cost for the legs, eyes, arms, and lives which it consumed in its operations").

¶ 38 FELA provides a statutory cause of action sounding in negligence, and federal and state courts exercise concurrent jurisdiction under the statute. *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 10, 987 N.E.2d 355. Moreover, an action brought in state court under FELA is governed by state procedural law and federal substantive law. *Schultz*, 201 Ill. 2d at 274, 775 N.E.2d at 973.

¶ 39 Under FELA, an employer has a duty to use reasonable care in providing its employees with a safe workplace. *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 558 (1987) (citing *Bailey v. Central Vermont Ry., Inc.*, 319 U.S. 350, 352-53 (1943)). Section 1 of FELA provides, in part, as follows:

> "Every common carrier by railroad *** shall be liable in damages to any person suffering injury while he is employed by such carrier *** for such injury or death resulting in whole or in

> part from the negligence of any of the officers, agents, or employees of such carrier[.]" 45 U.S.C. § 51 (2000).

Although FELA provides a remedy that parallels common-law negligence cases, it has been "liberally construed *** to further Congress' remedial goal" of holding railroads responsible for the physical dangers to which their employees are exposed. *Consolidated Rail Corp.*, 512 U.S. at 543.

¶ 40 While not a workers' compensation statute, the basis for liability under FELA "is the employer's negligence, not merely the fact that an employee is injured on the job." *Wilson*, 187 Ill. 2d at 373, 718 N.E.2d at 175. Accordingly, in filing a FELA claim, "the plaintiff must offer evidence proving the common-law elements of negligence: duty, breach, foreseeability, and causation." *Myers v. Illinois Central R.R. Co.*, 323 Ill. App. 3d 780, 787, 753 N.E.2d 560, 566 (2001); see also *Lynch v. Northeast Regional Commuter R.R. Corp.*, 700 F.3d 906, 911 (7th Cir. 2012). We note section 53 of FELA provides that an employee's contributory negligence does not bar recovery, but diminishes recovery in proportion to his fault. 45 U.S.C. § 53 (2000).

¶ 41 "Under this statute the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought." *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 500, 506 (1957).

> "[T]he inquiry in these cases today rarely presents more than the single question whether negligence of the employer played any part, however small, in the injury or death which is the subject of the suit. The burden of the employee is met, and the obligation of the employer to pay damages arises, when there is proof, even

> though entirely circumstantial, from which the jury may with reason make that inference." *Rogers*, 352 U.S. at 508.

"A jury verdict in a FELA action can be set aside only if there is a complete absence of probative facts to support the jury's conclusion." *Lynch*, 700 F.3d at 911; see also *Dennis v. Denver & Rio Grande Western R.R. Co.*, 375 U.S. 208, 210 (1963) (*per curiam*); *Lavender v. Kurn*, 327 U.S. 645, 653 (1946).

¶ 42 In this case, Illinois Central centers its argument on appeal on the element of foreseeability, claiming the injury to Jacob Lilienthal was not foreseeable to the railroad. "[R]easonable foreseeability of harm is an essential ingredient of [FELA] negligence." *Gallick v. Baltimore & Ohio R.R. Co.*, 372 U.S. 108, 117 (1963). The jury must be asked whether the railroad failed to observe " 'that degree of care which people of ordinary prudence and sagacity would use under the same or similar circumstances.' " *CSX Transportation, Inc. v. McBride*, 131 S. Ct. 2630, 2643 (2011). Thus, reasonable foreseeability depends on whether the railroad had a reasonable ground to anticipate that a particular condition would or might result in a mishap or injury. *CSX Transportation*, 131 S. Ct. at 2643. If the carrier " 'has no reasonable ground to anticipate that a particular condition . . . would or might result in a mishap and injury,' " the carrier " 'is not required to do anything to correct [the] condition.' " *CSX Transportation*, 131 S. Ct. at 2643 (quoting *Gallick*, 372 U.S. at 118 n.7). The test is whether the railroad was or should have been aware of conditions which created a likelihood that the employee would suffer the type of injury he did. *Rogers*, 352 U.S. at 503.

¶ 43 Here, there was a factual basis for the jury to conclude the railroad could foresee Jacob Lilienthal's injury. Duane Amato, Illinois Central's expert in industrial hygiene, testified the railroad knew asbestos caused asbestosis as early as the 1930s and lung cancer as early as the

1950s. As Jacob started at the railroad in 1957, the railroad knew of the dangers of asbestos throughout his career, and the jury could find he developed both asbestosis and lung cancer as a result of his exposure during his employment with the railroad. Moreover, evidence existed to indicate the railroad never warned Jacob about the dangers of asbestos.

¶ 44 Illinois Central argues petitioner presented no evidence of the level of airborne asbestos to which Jacob Lilienthal was exposed. However, the jury heard testimony from Jacob's former coworker, Mike McGowan, who testified to the asbestos-containing products he and Jacob worked with during their employment. Robert Winstead, a former railroad employee, testified to the asbestos dust from UNARCO blowing around the railyard. Winston even stated his boss called over to UNARCO "two or three times and raised holy Cain with them" about the dust.

¶ 45 The evidence indicates the railroad knew about the dangers of asbestos and knew its employees were being exposed to asbestos products and dust for years. The railroad never told its employees about the hazards of asbestos and failed to provide protective equipment or protect workers like Jacob Lilienthal from being exposed to asbestos from the products used or the dust emanating from UNARCO.

¶ 46 Here, the jury had evidence before it to find decedent's injury was foreseeable to the railroad and the railroad was negligent in failing to provide a reasonably safe workplace. Although Illinois Central disagrees with the jury's findings, " '[c]ourts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable.' " *Gallick*, 372 U.S. at 115 (quoting *Tennant v. Peoria & P.U. Ry. Co.*, 321 U.S. 29, 35 (1944)). Accordingly, we find the trial court did not err in denying Illinois Central's motion for judgment

notwithstanding the verdict.

¶ 47 D. Evidence of the UNARCO Lease Agreement

¶ 48 Illinois Central argues the trial court erred in admitting evidence of the lease agreement between GM&O and UNARCO, claiming the evidence was irrelevant and severely prejudicial to Illinois Central. We disagree.

¶ 49 The admission of evidence falls within the sound discretion of the trial court, and that decision will not be overturned on appeal absent an abuse of that discretion. *Snelson v. Kamm*, 204 Ill. 2d 1, 33, 787 N.E.2d 796, 814 (2003). "An abuse of discretion will be found where no reasonable person would take the view adopted by the circuit court." *Fennell*, 2012 IL 113812, ¶ 21, 987 N.E.2d 355. "An error in the admission or exclusion of evidence will not constitute reversible error unless one party has been prejudiced or the proceedings have been materially affected." *Pister v. Matrix Service Industrial Contractors, Inc.*, 2013 IL App (4th) 120781, ¶ 56, 998 N.E.2d 123.

¶ 50 Illinois Central argues the evidence and testimony regarding GM&O's lease of a portion of its Bloomington facility to UNARCO as well as evidence of UNARCO activities on the property during Jacob Lilienthal's employment was irrelevant and prejudicial. Illinois Central points out the testimony of UNARCO employee Windell Kessinger, who testified asbestos dust would be "all over the place." GM&O employee Robert Winstead also testified to dust coming from UNARCO that looked "like a snow storm."

¶ 51 The UNARCO lease and related evidence were relevant to show the railroad had knowledge and notice that the dust blowing into its facility from UNARCO was toxic to humans. Further, it showed the railroad's knowledge that working with and in the vicinity of asbestos posed a danger to workers.

¶ 52 Illinois Central's reliance on landlord-tenant law offers no relevance to the theory of liability in this case. Moreover, Illinois Central's claim the lease and UNARCO activities were prejudicial or confusing to the jury because of "the notoriety of the UNARCO plant in the Bloomington community" is nothing more than speculation and conjecture.

¶ 53 Illinois Central's final claim of error related to the UNARCO lease centered on the trial court's decision to prohibit defense counsel from questioning Kessinger and McGowan about their lawsuit against Illinois Central or UNARCO for alleged asbestos-related injuries and representation by petitioner's counsel. However, the parties agreed to an order *in limine* to exclude all reference to the health of the witnesses. Any discussion of the witnesses' representation by petitioner's counsel would necessarily violate the motion *in limine*, as questioning would require the witnesses to reveal the representation was related to asbestos claims. We find the trial court's decision to allow the evidence of the UNARCO lease and to exclude evidence regarding the witnesses did not constitute an abuse of discretion.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we affirm the trial court's judgment.

¶ 56 Affirmed.