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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

SUMMER TILLMAN, Independent Administrator of the Estate of Nino Tillman, Deceased)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	No. 13 L3040
v.)	
)	Honorable
EDWIN E. HOLLINS, M.D. and ADVOCATE HEALTH)	Daniel J. Lynch,
AND HOSPITALS CORPORATION, an Illinois not-for-)	Judge, presiding.
profit corporation d/b/a ADVOCATE MEDICAL)	
GROUP,)	
)	
Defendants-Appellants.)	

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Mason concurred in the judgment.

ORDER

Held: Plaintiff waived her contention that the trial court erred by limiting her attorney's closing argument and failed to prove that defense counsel's closing argument was prejudicial. Further, because we affirm the trial court's judgment, we need not address plaintiff's assertion that the trial judge was biased and her request to remand to a different trial judge.

¶ 1 Nino Tillman was 48-years-old when he died from cardiac arrest after exercising on a treadmill. He had a history of hypertension and recently had been diagnosed with diabetes, both

risk factors for cardiac arrest. In the three years before his death, Nino was under the care of Dr. Edwin Hollins, M.D., whom he began seeing shortly after being hospitalized in Ohio following a stroke. His daughter, Summer Tillman, acting as administrator of her father's estate, sued Hollins and Advocate Medical Group, Hollins's employer, for wrongful death. She alleged that shortly before her father's death, Hollins diagnosed him with diabetes, a condition that put him at a higher risk for cardiac arrest. She contended Hollins was negligent by failing to (i) test Nino for diabetes when he started treating him, (ii) diagnose Nino's diabetes in a timely manner, and (iii) properly treat Nino's diabetes after diagnosing it. Summer argued that timely diagnosis and proper treatment could have prevented his death.

¶ 2 Before trial, Summer's attorney filed a motion *in limine* asking that the defense's expert witness, Dr. Robert Golden, M.D., not be permitted to testify on certain topics he did not disclose in his Supreme Court Rule 213 (eff. Jan 1, 2007) interrogatories. Those topics were that Hollins did not breach the standard of care by failing to (i) adequately review Nino's hospital records, (ii) properly diagnose Nino's risk factors for cardiac arrest, and (iii) hospitalize Nino after diagnosing him with diabetes shortly before his death. Summer's attorney argued that having not discussed the topics in his Rule 213 disclosure, Dr. Golden was barred from discussing them at trial. Her attorney intended to use these so-called "gaps" in Golden's Rule 213 disclosure to discredit his opinion that Hollins met the standard of care. The trial court granted the motion *in limine*, over defense counsel's objection. During trial, the trial court advised Summer's attorney that, he could not comment in closing arguments on deficiencies or "gaps" in Dr. Golden's testimony "in a way that's disingenuous and not in good faith" to suggest to the jury that Dr. Golden was testifying to make money and support a fellow doctor.

¶ 3 The jury returned a verdict in favor of defendants, and the trial court entered the judgment. Summer’s motion for a new trial was denied, and she appealed, arguing the trial court erred by (i) barring her from arguing during closing argument that Golden had “gaps” in his testimony and (ii) allowing defense counsel, during closing argument, to discuss facts not in evidence regarding the number of pages in Nino’s Ohio hospital records. Further, for the first time, Summer now argues the trial judge made comments indicating bias, and should be substituted on remand.

¶ 4 We affirm. Summer waived her argument that the trial court improperly limited her attorney’s closing argument regarding “gaps” in Golden’s testimony by failing to cite cases supporting the argument. She also waived her contention that the trial judge was biased and failed to present sufficient evidence of bias. Further, the trial court did not err in allowing defense counsel to refer to the number of pages in Nino’s hospital records during closing argument, as both parties described it as a lengthy document during trial and defense counsel’s statements were accurate.

¶ 5 **Background**

¶ 6 In 2009, Nino Tillman had a hemorrhagic stroke due to high blood pressure while traveling in Ohio and was hospitalized there for six days. According to his Ohio hospital records, Nino reported a history of hypertension but said he was not on any medication. He also reported he was self-checking his blood pressure and trying to address his hypertension with weight loss and diet. While hospitalized, Nino was given a blood test for diabetes, called a hemoglobin A1C, which revealed an A1C level of 6.5. Although plaintiff’s expert witness testified that result indicated Nino had diabetes, the Ohio physicians did not diagnose him with diabetes. Nino’s

hospital discharge summary shows he was diagnosed with a brain hemorrhage, hypertension, and dyslipidemia, an elevated level of lipids in the blood. The hospital notes suggested pre-diabetes diet control.

¶ 7 When Nino returned to Chicago, he began seeing Dr. Edwin Hollins, an internal medicine specialist. At the first visit, six days after he was discharged from the Ohio hospital, Nino gave Hollins an oral history of his health issues. He also gave him a copy of his Ohio medical records. Hollins described the medical record as a “very thick document” and said that during the initial visit he did not have time to comprehensively review it. Instead, he followed his usual practice of first looking at the discharge summary, which details the important aspects of a patient’s hospitalization. The discharge summary showed Nino had a brain hemorrhage, hypertension, and dyslipidemia, but did not mention diabetes or show that Nino was prescribed diabetes medication. Hollins testified that in addition to Nino’s discharge summary, he looked at the radiology report, cholesterol levels, and the blood pressure results. He did not see Nino’s A1C diabetes test result, which was listed several pages after the cholesterol test results. Hollins said Nino did not tell him doctors in Ohio had diagnosed him with diabetes.

¶ 8 When asked by a jury question how he learned the lipid levels from Nino’s s Ohio hospitalization but not the diabetes test result, Hollins stated, “I get a thick stack of papers, and I look at the discharge summary to determine what the diagnosis is, what the diagnoses were, what the problems are. *** There are lots and lots and lots of blood tests that I didn’t look at. I looked only for the cholesterol, the lipids. That’s all I looked for in the terms of lab work. I wasn’t interested in anything else. There was no indication in the discharge summary that anything else was abnormal.” Hollins gave Nino back his hospitalization records.

¶ 9 Hollins testified that after the initial visit, his main concerns regarding Ninos' health were the brain hemorrhage, his history of hypertension, which could lead to another hemorrhage, and his elevated cholesterol. He said Nino's blood pressure was fine and though he was a big man, he was not obese. At the end of the visit, Hollins agreed to Nino's request to try to control his cholesterol through diet and to discontinue the statin prescribed by the Ohio doctors. Nino was also to continue with anti-hypertension medication. Nino was to return in three months for a re-check of his cholesterol levels. Hollins also referred Nino to a specialist for obstructive sleep apnea, which can contribute to hypertension.

¶ 10 Over the next two years, excluding a one year gap between 2010 and 2011, Hollins saw Nino regularly for various complaints. During those visits, Hollins continued to monitor Nino's blood pressure, which Nino was also monitoring at home, his cholesterol levels, and his hypertension medications. Hollins would adjust Nino's medications as his condition warranted.

¶ 11 In 2011, Nino was hospitalized in Virginia and was diagnosed with gastrointestinal bleeding and hypertension. He was not given an A1C test or diagnosed with diabetes and his blood sugar levels were deemed normal.

¶ 12 Nino saw Hollins on August 17, 2012, complaining for the first time of frequent urination and excessive thirstiness. Nino had also recently lost 19 pounds. A blood test showed high bad cholesterol and low good cholesterol, and an elevated A1C level. Hollins prescribed a statin as well as metformin, which is used to treat Type 2 adult-onset diabetes. Although Nino's A1C test was extremely elevated, Hollins testified that he was not dehydrated, and thus did not need to be admitted to the emergency room.

¶ 13 Nino saw Hollins again on August 20. Hollins diagnosed Nino with Type 2 diabetes and hypercholesterolemia and added a statin to Nino's drug regimen. Hollins said he anticipated Nino would fill his new prescriptions that day but he did not fill them until 10 days later, on August 30.

¶ 14 After being diagnosed with diabetes, Nino sought a second opinion from Dr. Jifunza Wright of Holistic Family Medicine. Nino saw Dr. Wright on two occasions. At his first visit on August 22, Nino did not tell Dr. Wright he was taking a statin. Dr. Wright was aware of Nino's A1C level and blood sugars, but she did not recommend hospitalization. Nino told Dr. Wright he was self-monitoring blood sugar levels. At the second visit on August 28, Wright recommended he see a preventative cardiologist.

¶ 15 Nino returned to Dr. Hollins on August 24. Dr. Hollins' notes show Nino had diabetes, elevated blood sugar, hypertension, and hypercholesterolemia. Hollins increased Nino's medication to reduce his blood sugar levels.

¶ 16 Nino's last visit to Dr. Hollins was on August 30. Nino's blood sugar reading was lower than it had been on August 17 and was trending downward. Hollins testified this indicated his treatment plan for diabetes was working but that he wanted Nino to start taking insulin. Hollins said Nino did not present with any cardiac symptoms that day.

¶ 17 Two days later, on September 1, Nino had a cardiac arrest after working out on a treadmill and died.

¶ 18 Summer Tillman, acting as administrator of Nino's estate, sued Dr. Hollins alleging wrongful death and survival claims. She alleged Hollins failed to test Nino for diabetes and failed to prevent the progression of his heart disease. She asserted Hollins could have diagnosed

Nino's diabetes sooner by reading all of his hospital records rather than just the discharge summary, giving Nino a diabetes test during the three years he was a patient, and taking a holistic rather than a complaint-oriented approach to his care. She also contended Dr. Hollins should have hospitalized her father as soon as his diabetes was diagnosed. Tillman also alleged claims for wrongful death and survival against Advocate Medical Group, Dr. Hollins' employer.

¶ 19 Before trial, Summer's attorney filed a motion *in limine* to bar defense expert witness, Dr. Golden, from giving an opinion on certain topics he did not disclose in his Supreme Court Rule 213 interrogatories—that Hollins did not breach the standard of care by failing to (i) adequately review Nino's Ohio hospital records, (ii) properly diagnose Nino's risk factors for cardiac arrest, and (iii) hospitalize Nino after diagnosing him with diabetes shortly before his death. Summer's attorney argued that because Golden did not discuss those topics in his Rule 213 disclosure, he was barred from discussing them at trial. Summer's attorney explained to the trial court that following his usual practice with expert witnesses, he did not depose Dr. Golden and wanted to ensure Dr. Golden did not offer any opinions that were not disclosed in his Rule 213 disclosure. The trial court granted the motion *in limine* over defendants' objection.

¶ 20 At trial, Summer presented two expert witnesses. Dr. Paul Genecin testified, in part, that primary care physicians should look at a patient's comprehensive history instead of dealing with health issues on a piecemeal basis. He opined that Dr. Hollins breached the standard of care by failing to notice in 2009 that Nino had diabetes and metabolic syndrome, a cluster of conditions including increased blood pressure, high blood sugar, excess body fat, and abnormal cholesterol levels, which together, increased the risk of heart disease, stroke and diabetes.

¶ 21 Dr. Cam Patterson, a cardiologist, testified that if Nino had been treated for high cholesterol and diabetes in 2009, his heart disease would not have progressed and he would not have died.

¶ 22 Defendants presented two expert witnesses. Dr. Golden opined that Hollins did not deviate from the standard of care when treating Nino. Golden testified that in their initial visit, it was reasonable for Hollins to agree to Nino's request to manage his cholesterol without medication and there was no assurance that Nino would have avoided his heart attack if he had been taking statins for high cholesterol since 2009. Golden said Hollins addressed Nino's primary issue, which was high blood pressure. Also, Hollins' treatment of Nino in August 2012, when he presented with symptoms of excessive thirst and frequent urination met the standard of care. Golden testified that, for a substantial percentage of people, the first symptom of coronary artery disease is sudden death. He said that in August 2012, and up until the day before his death, Nino did not present symptoms or complaints of a cardiac nature. When asked whether the deterioration of lab results and values over the years equated to medical negligence, Golden testified, "No, that's – that's a fact of life."

¶ 23 Dr. Patricia Cole, an expert cardiologist, opined that Nino died of an arrhythmia (abnormal heart rhythm) called a ventricular fibrillation. Dr. Cole testified that Nino never exhibited symptoms of coronary disease before his death. She said that when Nino first saw Hollins in 2009, Nino's risk of developing any kind of heart disease in the next ten years was five percent. Dr. Cole also opined that Nino developed diabetes sometime between his 2011 hospitalization in Virginia and his death in September 2012. She further testified that 30 percent of patients experience their first manifestation of coronary heart disease in a sudden cardiac

event and in her opinion, the care given to Nino between 2009 and 2012 was not a cause for his arrhythmia. Nino's primary problem was high blood pressure, which Dr. Hollins managed as best he could.

¶ 24 During closing argument, Summer argued Dr. Hollins was negligent for failing to "see the whole patient" and instead using a "piecemeal" approach to Nino's care. She criticized Hollins for failing to go through the "thick pile of records" from the 2009 Ohio hospitalization to find the diabetes lab results, which would have indicated Nino had metabolic syndrome. She also argued that Dr. Hollins should have ordered an "urgent workup" after diagnosing Nino with diabetes in August 2012. Summer contended that Hollins failed to track Nino's cardiovascular disease risk factors and missed an opportunity to save Nino's life.

¶ 25 The defense argued there was no evidence Dr. Hollins' care of Nino was below the standard of care. Moreover, counsel argued that none of the medical witnesses testified that Nino had symptoms of coronary artery disease before August 2012 and noted that sudden cardiac death is relatively common and is can be the first manifestation of coronary artery disease.

¶ 26 As to the A1C results from the Ohio hospitalization, defense counsel argued Dr. Hollins could not have been expected to read Nino's stack of medical records at the initial visit in 2009. Holding papers in his hand, defense counsel said, "So there's about, I counted them, 296 pages of records, there's 17 pages of labs, and the values for the cholesterol and the A1C are about 10 pages apart." Summer's attorney objected that the page count was not in evidence. The trial court overruled the objection, stating that he counsel would have an opportunity to rebut the argument. Although plaintiff's counsel did argue during his closing that Hollins was obligated to go

through all of Nino's Ohio "thick pile of records," he did not raise defense counsel's reference to the number of pages or to particular pages in his rebuttal.

¶ 27 The jury returned a verdict for defendants, and trial court order entered a judgment in their favor. In response to a special interrogatory, the jury said Dr. Hollins' conduct was not a proximate cause of Nino's death. The trial court denied a motion for a new trial.

¶ 28 Analysis

¶ 29 As a preliminary matter, we address defendants' motion to strike the statement of facts in Summer's brief for failing to comply with Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016). Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016) requires a brief's statement of facts to be "stated accurately and fairly without argument or comment, and with appropriate reference to the pages of record on appeal."

¶ 30 Defendants contend Summer's statement of facts improperly includes opinion and legal argument and fails to properly cite to the record and, thus, must be stricken. We agree that her statement of facts is deficient in some of the respects cited by defendants. Where a brief fails to comply with Rule 341(h)(6), we may strike the statement of facts or dismiss the appeal if the circumstances warrant. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9. But, as Summer's violations do not hinder our review, we will not strike her statement of facts (*McMackin v. Weberpal Roofing, Inc.*, 2011 IL App (2d) 100461, ¶ 3); we will, however, disregard any noncompliant portions. We also admonish counsel to carefully adhere to the requirements of the supreme court rules in future submissions.

¶ 31 Turning to the merits, Summer made two arguments in her post-trial motion seeking a new trial. She contended (i) her attorney's closing argument was unfairly limited by a trial court

ruling that he could not discuss “gaps” in Golden’s testimony and (ii) defense counsel’s closing argument unfairly argued facts not in evidence—the number of pages in the Ohio medical records and the number of pages between the results of Nino’s cholesterol test results and his diabetes test results. Summer reiterates those claims here. She also raises a new issue—the trial judge’s rulings and comments show an inherent bias—warranting remand to a different judge.

¶ 32 A motion for a new trial is directed to the sound discretion of the trial court, which must determine if the verdict is contrary to the manifest weight of the evidence. *O’Neil v. Continental Bank, N.A.*, 278 Ill. App. 3d 327, 335 (1996). The trial court’s decision to deny a new trial will not be disturbed unless there is a clear abuse of discretion that affirmatively appears from the record. *Id.*

¶ 33 Closing Argument

¶ 34 Summer first contends the trial court improperly limited her attorney’s closing argument. Specifically, she asserts she had the right to not depose Dr. Golden and to insist that he only testify regarding information provided in his Rule 213 disclosure. She further asserts she was prejudiced when her attorney was not permitted to discuss “gaps” in Golden’s expert opinion testimony—his failure to address in the Rule 213 disclosure why he concluded Hollins met the standard of care. She argues Golden offered no support for that conclusion and her attorney should have been permitted to attack Golden’s credibility by arguing that his opinion testimony had no factual basis. She contends the trial court’s decision to prevent her from arguing the significance of the “gaps” was “fatally prejudicial” and warrants a new trial.

¶ 35 First, we agree with Summer that she had the right to not depose the defense’s expert witnesses and to insist that his testimony be limited to information provided in his Rule 213

disclosure. Rule 213(g) states that “[t]he information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition, limits the testimony that can be given by a witness on direct examination at trial.” Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2007) But, the strategic decision not to depose an expert cannot serve to unilaterally magnify the amount of detail required to be disclosed. Defendants’ Rule 213 disclosures adequately apprised opposing counsel of the opinion Golden was expected to offer. Indeed, given the information in the disclosures, the trial court could well have concluded that any opinion Golden had was a logical extension of his disclosed opinion that Hollins did not breach the standard of care in treating the symptoms as he did. So, while the trial court determined that limiting the particulars of Golden’s testimony was appropriate, it does not follow, as Summer contends, that her attorney was entitled to argue to the jury that there were unexplained “gaps” in Golden’s opinion on the standard of care.

¶ 36 Summer’s brief is devoid of any authority to support her argument that she is entitled to a new trial because her attorney’s closing argument was improperly limited. Under Supreme Court Rule 341(e)(7), “an appellant’s brief must contain his contentions and the reasons therefor, accompanied by citation of authorities and pages of the record.” *Elder v. Bryant*, 324 Ill. App. 3d 526, 533 (2001). Summer’s brief cites two cases, *Sullivan v. Edward Hospital*, 209 Ill. 2d 100 (2004) and *York v. El Ganzouri*, 353 Ill. App. 3d 1 (2004), for the general proposition that Rule 213 does not compel a party to take an expert’s deposition and that litigants may rely on the expert’s disclosed opinion to construct their trial strategy. But she fails to present any support for her main contention, namely, that the trial court improperly limited her attorney’s closing argument or that a new trial is warranted. A failure to provide proper argument and authority

results in a forfeiture of the argument. *Elder*, 324 Ill. App. 3d at 533. This argument is waived.

Ohio Medical Record

¶ 37 Summer next asserts the trial court erred by allowing defense counsel, during closing argument, to inform the jury that Nino's Ohio medical records had 296 pages and that the results of his cholesterol test and A1C test were about ten pages apart, facts that were not in evidence. She contends that the number of pages in the record and the location of the blood test results in the medical record were key issues in determining whether Hollins breached the standard of care in not completely reviewing Nino's entire medical record to find the results of Nino's A1C test. She notes that a juror submitted a question asking Hollins, "How did you see the lipids levels from his hospital visit in Ohio but not the A1C? Were they that far apart in the document?" The court rephrased the question asking Hollins, "How did you learn of the lipid levels from his hospital visit in Ohio but not learn of the A1C of 6.5 percent?" Dr. Hollins responded, in part, "Well, what happens *** I get a thick stack of papers, and I look at the discharge summary to determine what the diagnosis is, what the diagnoses were, what the problems were. *** The blood sugar and the hemoglobin A1C are not in the same section. So *** I basically went to look for a specific result. *** There are lots and lots of blood tests I didn't look at."

¶ 38 Summer contends that as neither Hollins nor any other witness specifically testified about the number of pages in the medical record or the number of pages between the lipids and A1C test results, defense counsel should not have discussed it during closing argument.

¶ 39 Counsel is afforded wide latitude in closing argument and may comment on the evidence, as well as any reasonable inference that can be drawn from the evidence. *Thornhill v. Midwest Physician Center of Orland Park*, 337 Ill. App. 3d 1034, 1053 (2003). Even where improper

comments are made during closing argument, reversal is appropriate only if the comments substantially prejudiced the challenging party. *Ramirez v. City of Chicago*, 318 Ill. App. 3d 18, 26 (2000). Issues of the prejudicial effect of remarks made during closing argument are within the discretion of the trial court, and determinations regarding those issues will not be reversed absent a clear abuse of discretion. *Compton v. Ubilluz*, 353 Ill. App. 3d 863, 873 (2004). In determining whether there has been an abuse of discretion, we may not substitute our judgment for that of the trial court, or even determine whether the trial court exercised its discretion wisely. *Simmons v. Garces*, 198 Ill. 2d 541, 568 (2002).

¶ 40 The Ohio medical record was admitted into evidence, although it was not given to the jury. It is also included in the record on appeal and we can ascertain it is, in fact, 296 pages long and the number of pages between the lipids test result and the A1C result. While no witnesses were asked or testified about the precise number of pages in Nino’s Ohio medical records, Hollins described the medical record as a “very thick document” and a “thick stack of papers,” with multiple sections, and 19 pages of lab results. He also testified that the lipids test and A1C were not in the same section of the report, which would indicate they may have been pages apart. Moreover, in his own closing argument, Summer’s attorney referred to the Ohio records as a “thick pile of records.” Thus, even if specific page counts were not in evidence, it was made plain by testimony that the record was lengthy. Further, a defense counsel’s accurate statements during closing—that the medical record was 296 pages long and there were 10 pages between test results—could never be prejudicial or grounds for a new trial.

¶ 41

Trial Court’s Alleged Bias

¶ 42 Summer argues the trial judge made comments during trial and the hearing on her motion for a new trial that showed he was biased and warrants a substitution of judge on remand.

¶ 43 Generally, an issue not raised in the trial court may not be raised for the first time on appeal. *Travelers Casualty & Surety Co. v. Bowman*, 229 Ill. 2d 461, 470 (2008). Summer acknowledges she did not raise this issue during the trial or in her post-trial motion, but asks us to invoke an exception to the waiver rule, asserting that waiver is a limitation on the parties, not the court. See *Central Illinois Public Service Company v. Allianz Underwriters Insurance Company*, 244 Ill. App. 3d 709, 713 (1993).

¶ 44 Summer argues the trial judge's bias warrants remand to a different judge. As we are affirming the trial court and not remanding, we need not determine whether a substitution of judge is required.

¶ 45 Affirmed.