THIRD DIVISION
May 30, 2018

No. 1-17-0351

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LAURA HANSEN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 L 1395
	)	
GLENN SCHWARTZ, M.D., *et al*.,	)	Honorable
	)	James Michael Varga,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order is affirmed; where the jury was presented with the alternate defenses that defendant was 1) not negligent and did not injure plaintiff when he performed plaintiff's tonsillectomy, and 2) plaintiff's speech problems and trouble swallowing were psychological in origin, and the jury returned a general verdict for defendant, in the absence of special interrogatories we will not disturb the jury's finding under the two-issue rule.

¶ 2 Plaintiff, Laura Hansen, underwent a tonsillectomy performed by defendant, Dr. Glenn

Schwartz, M.D. After the surgery, she complained of dysphagia (difficulty swallowing) and dysarthria (trouble with speech). Plaintiff filed a complaint against defendant and his practice group, alleging medical malpractice and common law negligence under the doctrine *res ipsa loquitur*. Prior to trial the circuit court dismissed plaintiff's counts under *res ipsa*, and the case went to trial solely on a theory of negligence based on medical malpractice. At trial defendant presented two defenses: 1) defendant was not negligent, and 2) plaintiff's dysphagia and dysarthria were due to a psychogenic condition suffered by plaintiff called conversion disorder. The jury returned a general verdict in defendant and his practice group's favor. Plaintiff filed a post-trial motion arguing the trial court committed reversible error by preventing her from invoking the doctrine of *res ipsa loquitur*, and the trial court denied the motion. Plaintiff timely filed her appeal from the trial court's post-judgment ruling on the issue of *res ipsa*. For the reasons that follow we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 On May 26, 2006, plaintiff underwent a tonsillectomy performed by defendant at Northwest Community Hospital. After the surgery plaintiff began to have trouble swallowing, eating, and developed a speech impediment which affected her job performance. In September 2007, she filed a medical malpractice claim against defendant, his practice group, the anesthesiologist, her practice group, and the hospital. Plaintiff voluntarily dismissed the case and refiled it in 2014. Count I of plaintiff's complaint alleged defendant was negligent and was the proximate cause of her injury. Count II of plaintiff's complaint incorporated the allegations from Count I and claimed her injury must have been due to defendant's negligence under the doctrine of *res ipsa loquitur*. Plaintiff argued she "was in the exclusive control of defendant," that she was permanently injured as a result of the tonsillectomy, that her injury "would not have

occurred if the defendant had used a reasonable standard of professional negligence care during the course of the tonsillectomy," and that her injuries "sustained during her tonsillectomy would not have occurred absent medical negligence." Count III of plaintiff's complaint alleged her injury was due to negligence, and was brought against defendant's practice group, individually, and the hospital, individually. Count IV of plaintiff's complaint incorporated the allegations from Count III and claimed her injury would not have occurred but for the negligence of defendant's practice group and the hospital, under the doctrine of *res ipsa loquitur*. Counts V-VIII of plaintiff's complaint alleged negligence and *res ipsa* claims against the anesthesiologist, her practice group, and the hospital.

¶ 5 Depositions of Witnesses and Expert Witnesses

¶ 6 After plaintiff filed her complaint, plaintiff and defendant deposed witnesses prior to trial. Defendant deposed plaintiff's expert, Dr. Christiane Baltaxe. Dr. Baltaxe testified she evaluated plaintiff in April 2012. Dr. Baltaxe reported plaintiff suffers from dysarthria and severe dysphagia. Plaintiff has trouble speaking and swallowing. She has difficulty articulating, she grows fatigued the longer she speaks and becomes unintelligible. She coughs and chokes on food frequently. Certain foods get stuck on the back of her tongue because she is unable to completely swallow the food. Due to her trouble swallowing, plaintiff also reported to Dr. Baltaxe that she will wake from sleep gagging. Dr. Baltaxe explained people regularly swallow saliva naturally without thinking about it, that people normally produce saliva while sleeping and swallow it, and that plaintiff wakes up gagging because she does not swallow naturally when she produces saliva. Dr. Baltaxe testified that even with speech therapy, plaintiff would never return to her preinjury status. Dr. Baltaxe also testified plaintiff is not malingering – plaintiff has consistently reported the same complaints: "it's so consistent and it hasn't changed. And it's

documented by the various doctors and by her report and by her complaint."

¶ 7 Defendant deposed plaintiff's expert, Dr. John Bogdasarian. Dr. Bogdasarian stated it was his opinion within "a reasonable degree of medical certainty that the function of cranial nerve 12 or the hypoglossal nerve has been affected." He also found there was "some damage to the 9th cranial nerve or glossopharyngeal nerve." When asked as to the likely cause of those injuries, he indicated "there [were] a couple of potential ways that that could happen." The injury could have been caused by "pressure or improper angulation of the – which causes improper pressure of the mouth blade on the area of the base of the tongue and tonsillar fossa can produce injury to those." "And then another potential mechanism would be by improper dissection of the tonsillar bed." Dr. Bogdasarian indicated "those would be the likely scenarios" for the cause of injury. He concluded that injury to plaintiff's lingual nerve, hypoglossal nerve, and glossopharyngeal nerve "to a reasonable degree of medical certainty it would be my opinion that the most likely scenario would be angulation of the tongue blade and exertion of inordinate pressure on the tongue where all of those nerves are present." Dr. Bogdasarian stated that circulation was likely blocked by the angulation of the mouth retractor blade, and that when circulation is blocked the tongue will turn blue or a dusky color in a matter of minutes. However, he stated that plaintiff's medical records did not indicate her tongue turned blue or dusky during the tonsillectomy.

¶ 8 Although Dr. Bogdasarian thought plaintiff was injured by improper angulation of the mouth retractor blade, he also testified that he could not say plaintiff's injury would not occur but for some negligent surgical technique:

> "Q. Would you consider any injury to the cranial nerve that occurs as the result of a tonsillectomy to involve some defect in the surgical technique

indicative of negligence?

A. Well, I wouldn't want to make a blanket statement that way. I think it would depend on the circumstances.

* * *

Q. But for a run of the mill, bread and butter tonsillectomy will any injury to the cranial nerve represent negligent surgical technique in your opinion?

A. I think that again I hesitate to make a blanket statement like that and say that every time. I think I would need to be given the opportunity to consider a matter in which it happened before I made that pronouncement. So, I think I'm going to say I can't answer it."

Dr. Bogdasarian testified that he only found two reports of hypoglossal nerve injury from a tonsillectomy in the English language medical literature dating back to 1926. He further testified that the anesthesia literature reported complications plaintiff faced as a result of an inflated endotracheal tube cuff laryngoscopy, neck manipulation leading to compression against the mandible, and compression of the nerve between a laryngeal mask cuff and the hyoid bone.

¶ 9 In her deposition plaintiff testified she had a lesion on the right side of her tongue after surgery. Plaintiff testified that she complained of severe pain immediately after her operation in the operating room. After the tonsillectomy, plaintiff was transferred to the post-anesthesia care unit. Plaintiff reported throat pain to the nurse, although that is a common occurrence following a tonsillectomy. Plaintiff was admitted to the general medical floor of the hospital overnight. Plaintiff had a follow-up visit with defendant ten days after the tonsillectomy. Plaintiff reported her throat pain was improving, and defendant noted plaintiff had a slight improvement in her speech.

¶ 10 Plaintiff deposed defendant. Defendant testified he performed the tonsillectomy after the anesthesiologist inserted the endotracheal tube into plaintiff. After the anesthesiologist intubated plaintiff, defendant placed a Crowe-Davis mouth retractor in plaintiff and proceeded to remove plaintiff's tonsils. The procedure lasted about 13 minutes.

¶ 11 During his deposition, defendant was asked whether he was responsible for making sure "that the endotracheal tube remains in its proper place." Defendant replied "that that's a joint responsibility between [himself] and the anesthesiologist. No anesthesiologist will abdicate responsibility of the endotracheal tube to the surgeon."

> "Q. So in the end it is your responsibility to make sure even though it doesn't move like you said barring pushing it or something like that, it just doesn't pop out, it's your responsibility to make sure that it remains in the proper place within the mouth gag during the course of the tonsillectomy, correct?
>
> A. Yes, and the proper place, the proper insertion of the tube into the airway is the responsibility of the anesthesiologist."

¶ 12 Defendant testified he did not observe any lesion on plaintiff's tongue after surgery, and that the Crowe-Davis mouth retractor could not have caused such an injury in any case: "she described it as being on the side of the tongue when the Crowe-Davis is on the dorsal surface of the tongue, not on the side." Defendant also indicated the mouth retractor could not have caused such an injury because "the Crowe-Davis is a long instrument *** if there is going to be pressure, you'd have more of a linear lesion rather than a small circular lesion."

¶ 13 Dismissal of Plaintiff's Claims Under *Res Ipsa Loquitur*

¶ 14 After deposing witnesses, plaintiff voluntarily dismissed the anesthesiologist and her practice group in August 2014 because none of her witnesses testified that the anesthesiologist

was negligent or was the proximate cause of plaintiff's injury. The hospital filed a motion for summary judgment arguing defendant was an independent contractor and it was not responsible. The trial court granted the hospital's motion for summary judgment at a hearing on March 15, 2016.

¶ 15 In addition to ruling on the hospital's summary judgment motion, the court also heard defendant's section 2-619(a)(9) motion to dismiss counts II and IV, the claims sounding in *res ipsa loquitur*. 735 ILCS 5/2-619(a)(9) (West 2016). Defendant argued plaintiff could not support a claim under *res ipsa* because plaintiff isolated her claim of injury to negligent use of the Crowe-Davis mouth retractor and failed to show that the anesthesiologist instead caused plaintiff's injury. The trial court granted defendant's motion to dismiss the *res ipsa* counts because not all possible defendants were named - plaintiff had not eliminated the possibility that the anesthesiologist and not defendant was the cause of her injury. The trial court therefore found plaintiff's *res ipsa* claims "defective as a matter of law."

¶ 16 Plaintiff filed a motion to reconsider. The trial court denied plaintiff's motion, finding plaintiff had not "eliminate[ed] the possibility that the accident was caused by someone other than the defendant." The court found that while it was improbable that the anesthesiologist caused defendant's injury, it was nevertheless possible.

¶ 17 During a pretrial conference, plaintiff filed a motion to reinstate the *res ipsa* count of her complaint. Defendant filed a motion *in limine* to prevent plaintiff from introducing evidence of her *res ipsa* claim. Defendant argued Supreme Court Rule 213 barred any such evidence because Dr. Bogdasarian "never disclosed an opinion in [his] deposition that the occurrence of cranial nerve injury was evidence *ipso facto* of negligence." The trial court found that plaintiff's expert, Dr. Bogdasarian, had not disclosed an opinion that plaintiff's injury would not have

occurred in the absence of negligence. The court therefore barred plaintiff from presenting evidence supporting a claim under *res ipsa*. The next day the parties had a preliminary jury instruction conference, prior to jury selection. The case proceeded to jury trial.

¶ 18 The Trial

¶ 19 At trial, Dr. Paul Jones, a board certified ENT (Ear Nose & Throat) specialist who treated plaintiff in August 2011 testified for plaintiff. Dr. Jones found plaintiff suffered from "mild dysarthria," and "likely a hypoglossal nerve injury." However, Dr. Jones did not find any deviation of plaintiff's tongue, a symptom he would expect to see in patients suffering from hypoglossal nerve injuries. He did not observe any atrophy of plaintiff's tongue, a condition he would expect to see from the muscle shrinking from lack of use after a permanent hypoglossal nerve injury. He also saw no evidence of fasciculations (or "worm-like" movements of the tongue), which would be seen shortly after a nerve injury.

¶ 20 Dr. Bogdasarian testified for plaintiff. He repeated his earlier medical opinion that plaintiff suffered from a hypoglossal and lingual nerve injury caused by defendant improperly angling the blade of the mouth retractor when performing the tonsillectomy. Under cross-examination, Dr. Bogdasarian admitted plaintiff's injury is "well-recognized in the anesthetics literature." He also testified that plaintiff's treating physicians did not report any numbness of plaintiff's tongue, even though plaintiff should have experienced numbness of the tongue as a result of the lingual nerve being damaged. Dr. Bogdasarian also testified that when circulation is blocked to the tongue, the tongue will turn blue or dusky, and that the medical record indicated that plaintiff's tongue never turned blue or dusky during the tonsillectomy. Nor were there any reports of swelling of the tongue. On redirect, Dr. Bogdasarian again testified that he believed plaintiff's injury was caused by "the use of the Crowe-Davis retractor," and that he had no

"reason to believe that the anesthesiologist caused an injury to" plaintiff.

¶ 21 After Dr. Bogdasarian finished testifying, plaintiff made an offer of proof outside the presence of the jury on her motion to reinstate the *res ipsa* count of her complaint. Contrary to his answer in his deposition, Dr. Bogdasarian testified that "if [plaintiff] has a hypoglossal nerve injury, I don't think it happens in the absence of negligence in this particular circumstance." He believed the "Crowe-Davis retractor is what caused the injury," and that he had no "reason to believe that the anesthesiologist caused an injury to" plaintiff. Dr. Bogdasarian also testified that the mouth retractor was in defendant's control during the surgery, and that the anesthesiologist did not "have any role or any control over it."

¶ 22 Plaintiff retained a neurology expert, Dr. Paul Bertrand to testify at trial. Dr. Bertrand testified it was his medical opinion that plaintiff suffered from a tongue injury, which impacted her speech. He further testified that plaintiff sustained an injury to her glossopharyngeal and hypoglossal nerves, and possibly her lingual nerve. However, Dr. Bertrand testified that he found no evidence of atrophy, deviation, or fasciculations when he examined plaintiff, and that those conditions would be expected in a patient with a hypoglossal nerve injury.

¶ 23 Defendant called Dr. Syed Munzir, a neurologist who evaluated plaintiff in September 2006. Dr. Munzir testified that plaintiff did not report any problems swallowing or any decreased sensation in her tongue. However, Dr. Munzir testified plaintiff was mildly dysarthric during her visit with him. He found no physical findings of an injury to plaintiff's cranial nerves, and that plaintiff had a gag reflex. Dr. Munzir testified that the presence of a gag reflex indicates normal function of the vagus and glossopharyngeal cranial nerves.

¶ 24 Dr. Guy Petruzelli, a board certified ENT physician, testified for the defense. He found no indication of an injury to plaintiff's tongue in her records from the hospital from the

tonsillectomy. Dr. Petruzelli did not observe plaintiff exhibit deviation, fasciculations, or atrophy on her tongue. He testified that those are the main signs of injury to the hypoglossal nerve, and that if plaintiff had such an injury he would expect to see her present these symptoms. He also testified based on his experience with cancer patients with damage to the hypoglossal nerve, that plaintiff's speech pattern was inconsistent with the speech patterns of patients after the hypoglossal nerve has been removed.

¶ 25 Defendant also called Dr. Angelos Halaris, a psychiatrist, as a witness. He testified that based on his review of plaintiff's medical records, it was his medical opinion that plaintiff's dysarthria and dysphagia were the result of a conversion disorder caused by mental health issues. A conversion disorder is a psychiatric condition where an individual channels underlying psychiatric conditions into physical symptoms. Plaintiff was suffering severe stress and anxiety in her work environment, and Dr. Halaris believed this contributed to the formation of the conversion disorder.

¶ 26 Finally, defendant called Kim Zimmerman, director of the Department of Speech Therapy and the University of Illinois Chicago Medical Center, and a certified speech therapist. Zimmerman examined plaintiff and found no evidence that plaintiff's dysarthria or dysphagia were the result of damage to the cranial nerves. Zimmerman found plaintiff's substitution patterns were consistent with psychogenic dysarthria in the speech pathology literature. Zimmerman further testified that plaintiff's inconsistency in articulation was a hallmark of psychogenic dysarthria related to a conversion disorder.

¶ 27 Jury Verdict and Trial Court Ruling

¶ 28 At the close of evidence the trial court denied the motion to reinstate plaintiff's *res ipsa loquitur* counts, finding evidence of a *res ipsa* claim irrelevant because there was no pleading

brought under *res ipsa*. Plaintiff requested the jury receive instructions to consider evidence of a *res ipsa* theory of negligence. The trial court denied the request to provide such an instruction because the evidence was not relevant to the pleadings.

¶ 29 In closing arguments, plaintiff alleged defendant negligently angled the blade of the mouth retractor while performing her tonsillectomy and this damaged her cranial nerves, which caused her dysphagia and dysarthria. Defendant argued he was not negligent in using the mouth retractor, that plaintiff's injury may have been due to a non-party defendant's negligence, and that plaintiff may not have a physical injury at all because her dysphagia and dysarthria are due to conversion disorder. The jury returned a general verdict in defendant's favor. Plaintiff did not request special interrogatories and the court entered judgment on the verdict.

¶ 30 Plaintiff filed a post-trial motion claiming the trial court erred denying her from invoking the doctrine of *res ispsa loquitur*. The trial court denied that motion on January 18, 2017. The court found plaintiff never properly requested leave of the court to amend the complaint to allege *res ipsa*, because plaintiff never submitted a proposed pleading. The court also found plaintiff failed to establish her injury was caused by an instrumentality exclusively within defendant's control, and that the jury may have found for the defense on another element of medical malpractice so that under the two-issue rule the jury's verdict had to be sustained. This appeal timely followed.

¶ 31 ANALYSIS

¶ 32 Plaintiff claims the trial court's granting of defendant's motion to dismiss the *res ipsa* counts of her complaint, the court's denial of her motion to reinstate the *res ipsa* counts at the close of evidence, and the court's denial of her request for a *res ipsa* jury instruction constituted reversible error. Plaintiff argues the trial court committed reversible error because if the jury had

been given an instruction to consider her claim under the doctrine of *res ipsa loquitur*, then the jury would have reached a verdict in plaintiff's favor. Defendant contends the jury's general verdict in his favor is beyond review on appeal based on the two-issue rule.

¶ 33 A trial court's granting of a 2-619(a)(9) motion to dismiss presents an issue of law which we review *de novo*. *Kedzie and 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). Similarly, whether *res ipsa loquitur* should apply is a question of law, "so *de novo* review is appropriate for this reason as well." *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007).

¶ 34 In Illinois, the doctrine of *res ipsa loquitur* is applicable in medical malpractice cases. 735 ILCS 5/2-1113 (West 2016). When a plaintiff raises a medical malpractice claim under the *res ipsa* doctrine, "the court shall determine whether that doctrine applies. In making that determination, the court shall rely upon either the common knowledge of laymen, if it determines that to be adequate, or upon expert medical testimony, that the medical result complained of would not have ordinarily occurred in the absence of negligence on the part of the defendant." *Id*.

¶ 35 Two-Issue Rule

¶ 36 We will first address the two-issue rule raised by defendant. In this appeal, plaintiff argues it was reversible error for the court to not allow plaintiff to present her claim under a theory of *res ipsa loquitur* and for the jury to not be instructed on *res ipsa*. Defendant argues we are precluded from reviewing plaintiff's *res ipsa* claims based on the two-issue rule. Under the rule, when multiple separate and distinct defenses are raised and a general verdict for defendant is returned, there is a presumption that the jury found for defendant on every defense. *Strino v. Premier Healthcare Associates, P.C.*, 365 Ill. App. 3d 895, 904-05 (2006). So as long as the evidence at trial can support a jury finding for defendant that operates independently from

plaintiff's claimed error, we will not disturb the jury's verdict under the two-issue rule. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 102 (2010).

¶ 37 In this case the defendant presented two defenses: 1) he was not negligent when he performed the tonsillectomy and 2) plaintiff's symptoms were caused by plaintiff's psychological condition and not an injury from surgery. The jury returned a general verdict in favor of defendant. In the absence of a special interrogatory we presume the jury found for defendant on both defenses. *Id.* We find the defense that plaintiff's dysphagia and dysarthria are the product of conversion disorder operates independently of the *res ipsa* claims. This defense would not be affected by the *res ipsa* claims because if plaintiff's symptoms are psychogenic then they were not caused by the negligence of defendant.

¶ 38 Under the two-issue rule we next determine whether there was sufficient evidence to support the defense that plaintiff's symptoms are psychological in origin. See *Id.* (the *Lazenby* court reviewed whether there was sufficient evidence for the jury to sustain a verdict raised by the defense that would not have been affected by the claimed error. The court found "the jury's verdict was not against the manifest weight of the evidence, [and] conclude[d] that the trial court did not abuse its discretion in refusing to grant a new trial.").

¶ 39 Based on our review of the record, we find there was sufficient evidence for the jury to find plaintiff's dysphagia and dysarthria were the product of conversion disorder and not any act of negligence. Defendant presented expert witnesses who testified plaintiff lacked the physiological conditions associated with dysphagia and dysarthria, that plaintiff's speech pattern was not consistent with those injuries but more consistent with conversion disorder, and that plaintiff's psychiatric history combined with her stressful job were the most likely source of the conversion disorder. The jury heard evidence that plaintiff's claimed symptoms are inconsistent

with injury to the nerves, but more consistent with psychogenic injury.

¶ 40 Plaintiff maintains the evidence at trial does not support a finding that she suffers from a conversion disorder because Dr. Baltaxe testified her medical opinion was that plaintiff's dysphagia and dysarthria were not malingering and not the result of conversion disorder. However, the jury heard competing evidence on both sides and returned a general verdict in defendant's favor. The evidence in the record can support the jury's determination that plaintiff's injury was the result of a conversion disorder. Therefore, under the two-issue rule, we are precluded from disturbing the jury's verdict. *Lazenby*, 236 Ill. 2d at 102; *Tabe v. Ausman*, 388 Ill. App. 3d 398, 404-05 (2009).

¶ 41 Applicability of *Res Ipsa Loquitur*

¶ 42 Even if we were to ignore the two issue rule and consider plaintiff's *res ipsa* claims, we would still find there was no error. We find the court did not commit error when it barred *res ipsa* instructions because: 1) plaintiff did timely disclose an expert opinion to support a *res ipsa* instruction, and 2) because plaintiff dismissed the anesthesiologist and hospital, plaintiff could not prove the cause of her injury was in the exclusive control of defendant and his practice group. See *Heastie*, 226 Ill. 2d at 531-32 ("[A] plaintiff seeking to rely on the *res ipsa* doctrine must plead and prove that he or she was injured (1) in an occurrence that ordinarily does not happen in the absence of negligence, (2) by an agency or instrumentality within the defendant's exclusive control.").

¶ 43 Plaintiff failed to meet the first element of *res ipsa* because in his deposition, Dr. Bogdasarian testified he could not opine that plaintiff's injury does not ordinarily happen in the absence of negligence. Plaintiff needed an expert opinion to present a res *ipsa* case and the giving of *res ipsa* instructions because the issues in this case are not common knowledge. See

Walker v. Rumer, 72 Ill. 2d 495, 500-01 (1978) (finding a "bilateral palmar fasciectomy performed in this case was not" within the common knowledge exception to the requirement of proof by expert testimony. The *Walker* court indicated the type of medical malpractice claim within the common knowledge of laymen would be " 'where a sponge is left in the plaintiff's abdomen after an operation, where no expert is needed to tell the jury that such events do not usually occur in the absence of negligence.' "); see also *Borowski v. Von Solbrig*, 60 Ill. 2d 418, 423 (1975) ("the plaintiff, by the use of expert testimony must establish the standards of care against which the defendant doctor's conduct is measured. The plaintiff must then further prove by affirmative evidence that, judged in light of these standards, the doctor was unskillful or negligent and that his want of skill or care caused the injury to the plaintiff."); see also *Taber v. Riordan*, 83 Ill. App. 3d 900, 905 (1980) ("The standard of disclosure must be established through expert medical testimony just as such testimony is required on review of the correctness of the handling of cases involving surgery or treatment unless the matters involved are common knowledge or within the experience of laymen."). The opinion Dr. Bogdasarian gave at trial in the offer of proof, that the injury could not happen in the absence of negligence, contradicted his deposition testimony and was untimely. Ill. S. Ct. R. 213(f)(3) (eff. Jan 1, 2007); *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 849-50 (2010) ("the witness's testimony must be encompassed by the original opinion. [Citation.] The testimony cannot state new reasons for the opinion. *** The proponent of the evidence has the burden to prove that the opinions were provided in an answer to a Rule 213 interrogatory or in the witness' discovery deposition."). Plaintiff failed to abide Rule 213 and failed to prove the first element of *res ipsa* that her injury ordinarily would not occur in the absence of negligence. Therefore, it was not error for the trial court to bar introduction of evidence and instructions under *res ipsa*. *Sullivan v. Edward Hospital*, 209 Ill.

2d 100, 109 (2004); *Heastie*, 226 Ill. 2d at 531–32.

¶ 44 Plaintiff also has not shown defendant had exclusive control over the cause of her injury. Plaintiff proceeded to trial only against the defendant doctor who performed the tonsillectomy and his practice group. However, the anesthesiologist and the hospital where the operation was performed are no longer part of this action. There was testimony at trial that plaintiff could have been injured by the anesthesiologist during intubation or removal of the endotracheal tube, or by the positioning of plaintiff's neck by the nurse. There were other instruments either partially, or wholly out of defendant's control that also could have caused plaintiff's injury. Plaintiff has not eliminated the possibility that something out of defendant's control caused her injury. Therefore, the trial court properly dismissed the *res ipsa* count of plaintiff's complaint and did not err denying plaintiff's motion to reinstate her *res ipsa* count and denying plaintiff's request for a jury instruction on *res ipsa*. *Heastie*, 226 Ill. 2d at 531–32.

¶ 45 Under the two issue rule we presume the jury's general verdict in favor of defendant was based on a finding for defendant on all defenses presented. *Lazenby*, 236 Ill. 2d at 102. The defense that plaintiff's dysphagia and dysarthria were the result of a conversion disorder operates independently of plaintiff's *res ipsa* claims. There was sufficient evidence to support a defense that plaintiff's symptoms were the result of a conversion disorder and not physical injury. Therefore, we are precluded from reviewing plaintiff's *res ipsa* claims under the two-issue rule.

¶ 46 CONCLUSION

¶ 47 For the foregoing reasons we affirm the judgment of the circuit court of cook county.

¶ 48 Affirmed.