2018 IL App (1st) 172024-U

SIXTH DIVISION
DECEMEMBER 7, 2018

No. 1-17-2024

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RAFI KODJAVAKIAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
v.	)	
	)	No. 12 L 13666
THE CHEESECAKE FACTORY, INC., a Delaware Corporation,	)	
and THE CHEESECAKE FACTORY RESTAURANTS, INC.,	)	
a Delaware Corporation,	)	Honorable
	)	Rena Marie Van Tine,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in issuing the careful habits jury instruction, in limiting the testimony of one of plaintiff's witnesses, in denying plaintiff's request to have exhibits submitted to the jury during deliberations, or in denying plaintiff's motion for a new trial.

¶ 2 Plaintiff-appellant, Rafi Kodjavakian, appeals from a jury verdict in favor of defendants-appellees, The Cheesecake Factory, Inc. and The Cheesecake Factory Restaurants, Inc. (collectively, the defendants). On appeal, the plaintiff argues that the trial court erred in giving

certain jury instructions; in limiting the testimony of one of his witnesses; in denying his request to have certain exhibits submitted to the jury during deliberations; and in denying his motion for a new trial. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On December 5, 2012, the plaintiff filed a personal injury action against the defendants arising out of an incident that occurred at one of the defendants' restaurants, The Cheesecake Factory at the Old Orchard Shopping Center in Skokie, Illinois (the restaurant). In his complaint, the plaintiff alleged that while dining at the restaurant on September 10, 2011, his wooden chair "suddenly collapsed, causing [him] to fall backwards onto the floor, causing [him] to suffer serious and permanent damage." The three-count complaint alleged negligence, premises liability, and *res ipsa loquitur*[1].

¶ 5 Prior to trial, the defendants submitted written interrogatories to the plaintiff seeking disclosures of any witnesses he planned to call pursuant to Supreme Court Rule 213(f). See Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2018) ("[u]pon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial"). The defendants never received any written responses from the plaintiff. However, on February 18, 2015, defendants took a discovery deposition of Dr. Nader Aziz, the plaintiff's primary care physician. During that deposition, Dr. Aziz testified about his years as the plaintiff's primary care physician and the treatment he provided to the plaintiff for his back pain in 2011. The court ordered that the discovery period for disclosing all witnesses would close on November 14, 2016. During the discovery period, the

[1] A claim of *res ipsa loquitur* alleges that the manner and circumstance surrounding the occurrence and injury is of the kind which does not ordinarily occur without someone's negligence. *Meeks v. Great America, LLC*, 2017 IL App (2d) 160655, ¶ 2.

plaintiff did not disclose Dr. Aziz as either an independent expert witness under Rule 213(f)(2) ("[a]n 'independent expert witness' is a person giving expert testimony who is not the party, the party's current employee, or the party's retained expert") or as a controlled expert witness under Rule 213(f)(3) ("[a] 'controlled expert witness' is a person giving expert testimony who is the party, the party's current employee, or the party's retained expert"). See Ill. S. Ct. R. 213(f)(2); (3) (eff. Jan. 1, 2018). On March 10, 2017, however, after the discovery period had closed, and three weeks before trial, the plaintiff, for the first time, identified Dr. Aziz as an independent expert witness under Rule 213(f)(2), and also Dr. Aziz's opinion that the chair incident at the restaurant was the cause of the plaintiff's orthopedic issues. The defendants did not object to the late disclosure prior to trial.

¶ 6 A jury trial commenced on April 3, 2017. The plaintiff testified that on September 10, 2011, he was celebrating several birthdays with his family at the restaurant. The plaintiff acknowledged that he weighed approximately 250 pounds at the time. At one point during the evening, his 12-year-old daughter, who weighed approximately 90 pounds at the time, sat on his knee. He testified that suddenly "the chair just broke. I fell backwards. *** [T]wo of the [chair] legs had snapped off. *** [The chair] was broke in pieces [on the floor]." He felt pain in his back and his leg, but he left the restaurant without seeking medical attention because he did not think it was necessary at the time. A few hours later, however, his back and his right leg were "pounding" and "hurting really bad" so he went to the hospital. After reviewing X-rays, the doctor at the hospital told the plaintiff that nothing was broken; he directed the plaintiff to take over-the-counter pain medication and to follow-up with his physician. The over-the-counter medication did not help his pain, so he went to his primary care physician, Dr. Aziz, the following day. Dr. Aziz prescribed pain medications and referred him to Dr. Bernstein, an

orthopedic surgeon. The plaintiff met with Dr. Bernstein about three weeks later. Dr. Bernstein took an MRI scan, prescribed several medications, and directed the plaintiff to see a physical therapist or chiropractor. The plaintiff did not elect to have any surgical procedures done at that time because he did not think he needed it and no doctors recommended it. He followed up with Dr. Bernstein several more times for a few different types of treatment, including steroid injections, but nothing helped his pain for more than a few days. He was "tired of the needles" and "scared to get surgery," so he stopped seeing Dr. Bernstein in 2012.

¶ 7 The plaintiff testified that he continued to see Dr. Aziz regularly over the next few years as his primary care physician for routine physicals, blood tests, and other health issues, and he would tell him if his back or leg was hurting him at the time. He continued to take pain medications for his back over those years, as well. In 2015, after the pain continued and he lost all feeling in his big toe, the plaintiff met with Dr. Bernstein again and elected to have surgery. In 2016, Dr. Bernstein performed a lower back surgery on him for a herniated disc. The plaintiff testified that following the surgery, he still feels a little pain in his back, but he no longer has pain in his right leg and can move his toes. He considers the surgery a success. On cross-examination, the plaintiff admitted that he had gone to the hospital for back pain in 2007, and at that time, he told a nurse that his back pain was a "10 out of 10."[2]

¶ 8 Dr. Aziz also testified on the plaintiff's behalf. Due to a scheduling conflict that occurred during trial, however, the parties agreed to take a videotaped evidence deposition of Dr. Aziz outside the presence of the jury. The following morning, before the videotaped evidence deposition was played for the jury, the defendants filed several motions *in limine* seeking, *inter*

[2] Lisa Kodjavakian, the plaintiff's wife, testified consistently with the plaintiff and offered substantially similar testimony.

alia, to bar Dr. Aziz from offering expert opinions. The defendants argued that the plaintiff did not disclose Dr. Aziz as an independent expert witness under Rule 213(f)(2) until after the discovery period had closed, in violation of Rule 213. The motions argued that "[o]pinions as to the causation of plaintiff's orthopedic issues would be beyond the scope of Dr. Aziz's treatment of plaintiff, and thus represent an impermissible foray into 213(f)(3) opinions." The defendants noted that Dr. Aziz never offered any such expert opinions during his pre-trial discovery deposition. Following arguments from both parties, the court granted the defendants' motion *in limine*, in part, stating:

> "Supreme Court Rule 213 disclosures are mandatory and strict compliance is required. *** The opinions that are not timely disclosed it doesn't mean that they are automatically barred though. All of the facts and circumstances surrounding the reasons for the late disclosure have to be taken into account. *** [I]n doing so, I do look at all of the factors that are mandated to consider under [*Sullivan v. Edward Hospital*, 209 Ill. 2d 100 (2004)]. *** In weighing all of the factors in favor of and against Dr. Aziz, who I find has been disclosed late, I am granting the defense motion in part. I am going to limit the testimony of Dr. Aziz to what was timely disclosed; that is, what was brought up during the course of [pre-trial] discovery deposition rather than the [videotaped] evidence deposition."

The court clarified that Dr. Aziz was allowed to testify to the subject matters covered in the discovery deposition, including his treatment of the plaintiff through the date of the discovery

deposition. The court explained that Dr. Aziz was not allowed to testify to any expert opinions or to his treatment of the plaintiff after the date of the discovery deposition. The court directed the plaintiff to redact parts of Dr. Aziz's videotaped evidence deposition in accordance with its ruling before playing it for the jury.

¶ 9 Dr. Aziz's redacted videotaped evidence deposition was played before the jury. He testified that he had been the plaintiff's family doctor since the mid to late 2000's. On September 12, 2011, the plaintiff came to see him because he had "injured his lower back, right hip, and right ankle, after falling when a chair broke and he landed on his back." After an exam, he diagnosed the plaintiff with sprained lower back, sprained Achilles tendon, sprained right ankle, and herniated intervertebral disc. He prescribed him some medications and directed him to have an MRI performed. After a few more follow-up visits, he sent the plaintiff to see an orthopedic surgeon. He also continued to see the plaintiff over the next few years for his routine physicals and other unrelated health issues. Dr. Aziz had no recollection of the plaintiff ever complaining about back problems before his September 12, 2011 visit.

¶ 10 Dr. Avi Bernstein, the plaintiff's orthopedic surgeon, testified next. He testified that after examining the plaintiff and his MRI scan, his initial diagnosis was that the plaintiff suffered either an injury to his disc or a strain in his lower back as a result of the chair incident. Following another exam and MRI scan a few weeks later, Dr. Bernstein believed the plaintiff's disc condition to be progressing over time, especially because the plaintiff's pain continued to worsen. He told the plaintiff that he was a candidate for spinal surgery, but he did not see the plaintiff again until nearly four years later. At that time, the plaintiff told Dr. Bernstein that he had seen another spinal surgeon who also recommended surgery. In 2016, Dr. Bernstein performed a surgery on the plaintiff called a laminectomy, which he described as "an operation

where we are removing bone from the back of the spine and removing any pieces of discs that might be pinching the nerve." In his opinion, the surgery was a success. Following Dr. Bernstein's testimony, the plaintiff rested his case.

¶ 11 The defendants then presented their first witness: Dr. Stanford Tack, an orthopedic surgeon who treated the plaintiff in 2007. Dr. Tack testified that, according to medical records, the plaintiff went to the emergency room for lower back pain in 2007. The medical records reflected that he told an emergency room nurse that his pain was a "10 out of 10." The emergency room physician prescribed him pain medications and referred him to Dr. Tack. The plaintiff told Dr. Tack that he did not suffer any physical trauma that caused the back pain. Dr. Tack found the plaintiff's pain to be consistent with a degenerative disc condition. The plaintiff received medication from Dr. Tack, but did not follow up with him.

¶ 12 Dr. Wellington Hsu, an orthopedic spine surgeon, then testified as an expert witness for the defendants. He never personally treated the plaintiff, but he reviewed the medical records of Dr. Aziz, Dr. Bernstein, and Dr. Tack. He opined that the plaintiff suffered from a "degenerative disc disease in the lumbar spine," which is most commonly caused by genetics and age. He explained that a degenerative disc disease generally cannot resolve on its own and will progress over time. Dr. Hsu opined that after reviewing the plaintiff's medical records, the plaintiff's degenerative disc disease was not caused by any physical trauma and his back pain was in "no way related to the fall."

¶ 13 The defendants' final witness was Benjamin Pratola, the general manager of the restaurant. Pratola testified at length about the safety procedures conducted by staff at the restaurant in 2011, which included conducting weekly visual inspections of all chairs, training staff to report any damage found on chairs, and repairing any chairs with fixable damage. Pratola

testified that he was working at the restaurant during the plaintiff's chair incident on September 10, 2011. He said he did not witness the incident, but that a manager told Pratola that a guest had fallen in a chair. He went to the plaintiff's table immediately thereafter. He asked the plaintiff if he was okay and the plaintiff "stated he was." The plaintiff further told Pratola that his daughter had been sitting on his lap "and they were goofing around and they leaned back and the chair fell over." Pratola testified that the plaintiff "seemed more embarrassed than hurt." Pratola discarded the chair following the incident because it was broken beyond repair.

¶ 14 After the defense rested, the court held a jury instruction conference. The defendants proposed that the jury receive an instruction regarding the defendants' careful habits as proof of ordinary care, pursuant to Illinois Pattern Jury Instruction, Civil, No. 10.08 (2018) (hereinafter, IPI Civil No. 10.08 or careful habits instruction[3]). The plaintiff objected to this instruction, arguing that it is only proper in cases involving the Dead Man's Act[4] and that it would conflict with the other jury instructions, particularly the *res ipsa loquitur* instruction. The trial court allowed the careful habits instruction over the plaintiff's objection, stating: "I'm giving this instruction, and I think this instruction would also be relevant in balancing and explaining to the jury what they need to consider as well as for the *res ipsa loquitur*." The court then provided the jury with the following instruction regarding careful habits:

[3] For the sake of clarity, this order will refer to the Illinois Pattern Jury Instruction, Civil, No. 10.08 as the "careful habits instruction," except when referring to the actual document, in which case this order will refer to the instruction as "IPI Civil No. 10.08."

[4] The Dead Man's Act provides: "In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability" except in certain circumstances. 735 ILCS 5/8-201 (West 2012).

> "If you decide there is evidence tending to show that the defendants were persons of careful habits, you may infer that he [*sic*] was in the exercise of ordinary care for the safety of others at and before the time of the occurrence, unless the inference is overcome by other evidence. In deciding the issue of the exercise of ordinary care by the defendants you may consider this inference and any other evidence upon the subject of the defendants care."

Subsequently, the court instructed the jury on *res ipsa loquitur* as follows:

> "Under Count III, the plaintiff has the burden of proving each of the following propositions: First: That the plaintiff was injured. Second: That the injury was received from a chair which had been under the defendant's control. Third: That in the normal course of events, the injury would not have occurred if the defendant had used ordinary care while the chair was under its control. If you find that each of these propositions has been proved, the law permits you to infer from them that the defendant was negligent with respect to the chair while it was under his control or management."

¶ 15 The plaintiff also requested that Dr. Aziz's medical record exhibits be provided to the jury during deliberations. The court denied his request because the records were voluminous and they had been shown to the jury during several witness testimonies.

¶ 16 Following deliberations, on April 10, 2017, the jury returned a verdict in favor of the defendants. On May 9, 2017, the plaintiff filed a 26-page motion for a new trial, arguing that trial court: (1) gave improper jury instructions; (2) wrongfully barred critical testimony from Dr.

Aziz; and (3) wrongfully prevented the jury from reviewing exhibits. At the same time, the plaintiff filed a separate motion for leave to file, *instanter*, an oversized motion and memorandum of law. That motion requested leave to file his motion for a new trial despite it containing 26 pages because "the additional pages will allow the plaintiff to more clearly articulate his position."[5] On May 19, 2017, the court granted the plaintiff's motion for leave to file, *instanter*, an oversized motion and memorandum of law, ordered the defendants to respond to the motion for a new trial, and scheduled a hearing for the motion. Following that hearing on July 17, 2017, the court denied the plaintiff's motion for a new trial. The plaintiff filed his notice of appeal on August 14, 2017.

¶ 17 ANALYSIS

¶ 18 As a preliminary matter, we first address the defendants' contention that this court lacks jurisdiction in this case. The defendants argue that on May 9, 2017, the plaintiff filed a single, combined motion for a new trial and a motion for leave to file, *instanter*, an oversized motion and memorandum of law. They claim that the plaintiff's motion for a new trial was not actually filed until the court granted leave to file it on May 19, 2017, after the statutory deadline for filing post-trial motions. See ILCS 5/2-1202(c) (West 2012) ("[p]ost-trial motions must be filed within 30 days after the entry of judgment or the discharge of the jury"). The defendants assert that "[a]lthough the trial court granted plaintiff leave to file his post-trial motion on May 19, it appears that the trial court had no jurisdiction to do so. The trial court lost jurisdiction on May 10 when no post-trial motion had been filed. *** Because plaintiff's post-trial motion was not timely filed within the 30-day period ***, his subsequent notice of appeal, filed on August 14,

[5] It is unclear from the motion or anything else in the record as to what authority limited the number of pages in the plaintiff's motion for a new trial, but we can infer that the court had a standing order with a page limit for motions and that 26 pages exceeded that page limit.

was not timely." We reject this argument. The defendants' argument ignores the fact that the plaintiff filed two *separate* motions on May 9, 2017, within the 30-day statutory deadline. The motion for a new trial was not attached to the other motion, but instead was filed independently. The other motion, the motion for leave to file, *instanter*, an oversized motion and memorandum of law, simply requested the court to consider the motion for a new trial notwithstanding its oversized length. The court even noted the two separate motions in its May 19, 2017 order: "This case coming to be heard on plaintiff's motion for a new trial *and* motion for leave to file overlength brief *** ." (Emphasis added.) After May 9, 2017, the plaintiff's motion for a new trial was therefore, filed and pending. It is irrelevant that the the trial court did not rule on the motion for leave to file, *instanter*, an oversized motion and memorandum of law until May 19, 2017. A trial court is not required to *rule* on a post-judgment motion within 30 days. A party is simply required to *file* any post-judgment motions within 30 days, which the plaintiff here did when he filed his motion for a new trial on May 9, 2017. And because he filed his notice of appeal within 30 days following the trial court's denial of his motion for a new trial, his appeal was timely and we accordingly have jurisdiction in this case Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 19 Turning to the merits, the plaintiff presents the following four issues: (1) whether the trial court abused its discretion in giving the careful habits jury instruction; (2) whether the trial court abused its discretion in limiting Dr. Aziz's testimony; (3) whether the court abused its discretion in denying the plaintiff's request to have medical record exhibits sent to the jury room during deliberations; and (4) whether the trial court abused its discretion in denying the plaintiff's motion for a new trial. We take each argument in turn.

¶ 20 The plaintiff first argues that he was prejudiced by the careful habits jury instruction. His

argument is twofold: (1) that the careful habits instruction is proper only in instances where a person is deceased or cannot otherwise testify, such as in wrongful death cases, and (2) that the careful habits instruction directly conflicted with the *res ipsa loquitur* instruction which was also given to the jury in this case, and therefore misled the jury. He points to the notes in IPI Civil No. 10.08, which state that the careful habits instruction is to be used in cases where there were no eyewitnesses but there was evidence of a party's habits demonstrating ordinary care. IPI Civil No. 10.08 ("This instruction can be given in a negligence or willful and wanton action based on the Wrongful Death Act when there are no witnesses to the occurrence, other than the defendant, covering the entire period in which the decedent must be in the exercise of ordinary care. With modifications this instruction will cover cases of incompetents, and of persons suffering from retrograde amnesia as a result of which they have no recollection of the occurrence; or to cases in which the only eyewitness is barred by the Dead Man's Act."). The plaintiff argues that this instruction is not appropriate for a negligence case with eyewitnesses because the trier of fact must determine whether a defendant exercised care *at the time of the alleged occurrence*, not prior to the alleged occurrence of as a matter of habit. He additionally argues that even if the careful habits jury instruction could be used in this type of negligence case, it was still were given in error because it "diametrically opposed" the court's jury instruction on *res ipsa loquitur*. He claims that the careful habits instruction "essentially allowed the jury to conclude that the defendants' purportedly careful habits, *i.e.*, weekly inspections and training staff to look out for items of disrepair, negated plaintiff's claim of negligence" and that "all the jury had to do was conclude that the restaurant had careful habits and therefore infer that the defendants were not negligent." He argues the conflicting instructions confused and misled the jury in this "close case," ultimately prejudicing him.

¶ 21 The function of jury instructions is to convey to the jury the correct principles of law applicable to the submitted evidence. *Doe v. University of Chicago Medical Center*, 2014 IL App (1st) 121593, ¶ 77 (quoting *Dillon v. Evanston Hospital,* 199 Ill. 2d 483, 507 (2007)). "Whether to provide a particular jury instruction lies within the sound discretion of the trial court, and we, as the reviewing court, will not disturb that determination absent a clear abuse of discretion." *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1020 (2006). An abuse of discretion occurs when a trial court's decision is arbitrary, fanciful, unreasonable, or where no reasonable person would adopt the court's view. *Horlacher v. Cohen*, 2017 IL App (1st) 162712, ¶ 81. "Ultimately, there is no abuse of discretion as long as, 'taken as a whole, the instructions [given at trial] fairly, fully, and comprehensively apprise[ ] the jury of the relevant legal principles' of the case presented. *Webber*, 368 Ill. App. 3d at 1021 (quoting *Schultz v. Northeast Illinois Regional Commuter Railroad Corp.*, 201 Ill. 2d 260, 273–74 (2002)). A reviewing court will not reverse a trial court for giving improper jury instructions unless they clearly misled the jury and resulted in prejudice to the appellant. *Schultz*, 201 Ill. 2d at 274.

¶ 22 We are not persuaded by either of the plaintiff's arguments that the careful habits instruction was given in error. First, we reject his argument that a careful habit instruction cannot be provided in negligence cases where there are eyewitnesses. The plaintiff is correct in that the notes and comments in IPI Civil No. 10.08 cite to wrongful death cases where there were no eyewitnesses. However, in *Powell v. Dean Foods Co.*, 2013 IL App (1st) 082513-B, ¶ 124, this court noted the recent adoption of Illinois Rule of Evidence 406 in 2010, which allows for careful habits evidence regardless of the presence of eyewitnesses.[6] The defendant in that case

[6] Illinois Rule of Evidence 406 provides in full: "Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of

also relied upon the comments in IPI Civil No. 10.08 to argue that the careful habits instruction is only proper in wrongful death cases where there are no eyewitnesses. This court disagreed:

> "Plaintiffs respond that Illinois courts have adopted Federal Rule of Evidence 406, which allows for the admission of habit evidence regardless of eyewitness testimony. Plaintiffs are correct. The Illinois Supreme Court adopted Federal Rule 406 in September 2010 as part of the Illinois Rules of Evidence."

We acknowledge that *Powell* recognized that "allowing the admission of habit evidence does not automatically mean that the jury instruction should have been given." *Powell*, 2013 IL App (1st) 082513-B, ¶ 125. In that case, we found that the careful habits jury instruction had been given in error, but only because the plaintiff had admitted contributory negligence. *Id.* ¶ 127 ("It was inconsistent to then instruct the jury that it could find she was in the exercise of due care while at the same time the plaintiffs were admitting her contributory negligence."). Nonetheless, *Powell* clearly held that careful habits evidence is admissible as evidence of routine practice, even in cases where there are eyewitnesses. We therefore reject the same argument that the plaintiff now makes before us.[7] It necessarily follows that a careful habits jury instruction would be proper in such a case, as long as it did not conflict with any other evidence or jury instruction in the case.

¶ 23 That leads us to the plaintiff's other argument: that the careful habit jury instruction conflicted with the *res ipsa loquitiur* instruction and confused the jury in this case. We also reject this argument. The plaintiff presented multiple theories at trial, and the different jury instructions

---

eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice." Ill. R. Evid. 406 (eff. Jan. 1, 2011).

[7] It is worth noting that none of the cases cited to in the comments section of IPI Civil No. 10.08 are dated after the 2010 adoption of Illinois Rule of Evidence 406.

reflected those different theories. We agree with the trial court that the careful habits instruction was necessary to explain what the jury needed to consider after hearing the plaintiff's various theories and all of the evidence, including careful habits evidence. The plaintiff fails to point to any evidence suggesting that the jury was confused. Besides, the different instructions allowed the jury to draw their own inferences based on the evidence. The careful habits instruction stated "you *may* infer" and the *res ipsa loquitur* instruction provided "the law *permits* you to infer." (Emphasis added.) Despite the plaintiff's argument to the contrary, neither instruction *required* the jury to draw certain inferences. Under these circumstances, the careful habits instruction was able to coexist with the *res ipsa loquitur* instruction without confusing or misleading the jury.

¶ 24 Because we find that the careful habits jury instruction was not misleading or confusing, we cannot find any resulting prejudice. We accordingly reject the plaintiff's arguments that the trial court abused its discretion in providing the careful habits jury instruction.

¶ 25 The plaintiff next argues that the trial court erred in limiting Dr. Aziz's testimony to the subject matter in his pre-trial discovery deposition. The plaintiff claims that this limitation "severely prejudiced" him in light of Dr. Hsu's expert testimony, as it deprived him of the opportunity to have Dr. Aziz contradict Dr. Hsu.

¶ 26 Rule 213(g) limits expert opinions at trial to "[t]he information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition." Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2018). Rule 213 disclosures are mandatory and strict compliance is required. *Morrisroe v. Pantano*, 2016 IL App (1st) 143605, ¶ 37. In determining whether the exclusion or limitation of a witness is a proper sanction for nondisclosure, a court must consider the following factors: (1) the surprise to the adverse party; (2) the prejudicial effect of the testimony; (3) the nature of the testimony; (4) the diligence of the adverse party; (5) the timely objection to the testimony; and

(6) the good faith of the party calling the witness. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 110 (2004). The admission of evidence pursuant to Rule 213 is within the sound discretion of the trial court, and the court's ruling will not be disturbed absent an abuse of that discretion. *Id*.

¶ 27 The plaintiff does not deny that he violated Rule 213 by failing to timely disclose Dr. Aziz as an independent expert witness pursuant to Rule 213(f)(2). Instead, he focuses on the alleged unfairness caused by limiting Dr. Aziz's testimony. However, the plaintiff was the one who failed to timely disclose Dr. Aziz's full testimony and opinions to the defendants. "The purpose of discovery rules, governing the timely disclosure of expert witnesses, their opinions, and the bases for those opinions, is to avoid surprise and to discourage strategic gamesmanship amongst the parties." *Morrisroe*, 2016 IL App (1st) 143605, ¶ 37. It is clear that before limiting Dr. Aziz's testimony, the trial court carefully considered each of the factors identified in *Sullivan*, 209 Ill. 2d 100 (2004). And it is not unreasonable that the trial court found that those factors weighed in favor of the defendants. This is especially true considering the surprise to the defendants, who learned at the eleventh hour that the plaintiff planned to present Dr. Aziz as an expert witness who would provide causation opinions. The plaintiff's late disclosure of his plan to call Dr. Aziz as an expert is inexcusable considering that Dr. Aziz is his primary care physician with whom he was familiar long before the trial.

¶ 28 Even if the factor of timely objection to the testimony weighed in favor of the plaintiff, as he argues it does, it cannot be said that no reasonable person would take the view adopted by trial court in determining that the factors in totality weighed in favor of the defendants. Moreover, the trial court narrowly tailored the discovery sanction, allowing Dr. Aziz to still testify to everything disclosed in his discovery deposition. Accordingly, the court did not abuse its discretion in limiting Dr. Aziz's testimony.

¶ 29 The plaintiff next argues that the court erred in denying his request to have Dr. Aziz's medical record exhibits provided to the jury during deliberations. He claims that the medical records "call into question Dr. Hsu's knowledge of the plaintiff's condition" and "would have allowed the jury to test" his conclusions. The plaintiff asserts that the medical records were central to refuting Dr. Hsu's testimony, especially in light of Dr. Aziz's testimony being limited, and that he was prejudiced by the trial court's denial to send the records to the jury room.

¶ 30 Papers read or received in evidence, other than depositions, may be taken by the jury to the jury room for use during the jury's deliberation. 735 ILCS 5/2-1107(d) (West 2012). Yet, it is well established that the preferred procedure for lengthy exhibits that contain irrelevant portions is to have the relevant portions of the exhibit read to the jury. *Lawson v. G. D. Searle & Co.*, 64 Ill. 2d 543, 556 (1976). The trial court has considerable discretion in determining whether an exhibit may be taken into the jury room and its decision will not be disturbed unless there was an abuse of discretion that prejudiced the requesting party. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 66.

¶ 31 The record reflects that Dr. Aziz's medical records were voluminous and contained irrelevant material regarding the plaintiff's other health issues. We agree with the defendants that sending the medical records to the jury room would have likely overwhelmed and confused the jury as to which portions were relevant to this case. Moreover, the relevant portions of Dr. Aziz's medical records were read and shown to the jury several times during trial. Therefore, the jury still received the relevant information, undermining the plaintiff's claim of prejudice. Accordingly, the trial court did not abuse its discretion in denying the plaintiff's request to provide certain medical record exhibits to the jury during deliberations.

¶ 32 Finally, the plaintiff argues that the court erred in denying his motion for a new trial. In considering whether a motion for a new trial should be granted, a trial court should set aside a jury's verdict only if it is contrary to the manifest weight of the evidence or a party has been denied a fair trial. *Hana v. Illinois State Medical Inter-Insurance Exchange Mutual Insurance Co.*, 2018 IL App (1st) 162166, ¶ 15. Because the trial court is in a superior position to consider errors that may have occurred and whether substantial justice was accomplished, its ruling on a motion for a new trial will not be reversed by this court unless there is a clear showing that it abused its discretion. *Id*. The plaintiff's motion for a new trial was based on the same arguments he made on appeal, which we have already discussed. Considering that we have now rejected all of those arguments, we cannot find that the court abused its discretion in denying the plaintiff's motion for a new trial.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.