

No. 1-13-0762

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SERGIO CISNEROS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 L 4533
)	
BIG CHICAGO, INC., and JOSE SANCHEZ,)	Honorable
)	James M. Varga,
Defendants-Appellees.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 **Held:** Where plaintiff did not demonstrate that trial court's decision to grant a new trial constituted an abuse of discretion and where record is insufficient to review verdict in favor of defendant after second trial, judgment in favor of defendant is affirmed.

¶ 2 Following a second jury trial, plaintiff Sergio Cisneros appeals from a judgment for defendant, Big Chicago, Inc., on his dram shop and negligence claims. On appeal, Cisneros contends that the first jury verdict in his favor on the dram shop count should have been upheld, while a new trial should have been conducted only on the negligence count. He also contends that following the second jury trial, he was entitled to a new trial on the dram shop and

negligence counts because the jury's verdict was against the manifest weight of the evidence. He asks this court to either reinstate the jury verdict from the first trial, or remand for retrial on all issues. We find that Cisneros has failed to sustain his burden to show that the trial court abused its discretion in granting a new trial and that he has likewise failed to provide a sufficient record on appeal to address his claim that the verdict in favor of Big Chicago after the second trial was contrary to the manifest weight of the evidence. We therefore affirm the judgment in favor of Big Chicago.

¶ 3 In his complaint as amended on May 16, 2008, Cisneros raised claims under the Dram Shop Act (235 ILCS 5/6-21) (West 2008)) (Count 1) and for common law negligence (Count 2) against Big Chicago, a corporation that owns Crobar located at 1543 North Kingsbury Street. The complaint also included intentional tort and negligence claims (Count 3) against Jose Sanchez, a patron at the bar, who is not a party to this appeal.

¶ 4 Cisneros generally alleged that in the early morning hours of May 27, 2007, employees of the bar served Sanchez alcohol in such quantity as to cause his intoxication. While intoxicated, Sanchez assaulted Cisneros and struck him with a liquor bottle, which caused serious and permanent injuries. Cisneros further alleged that the bar negligently failed to supervise and/or control its patrons and employees. Cisneros claimed that as a direct and proximate result of the intoxication of Sanchez caused by the bar, he suffered severe and permanent injuries, incurred and will continue to incur substantial sums for hospital, medical, nursing and other expenses; and has been unable to work. Based on his injuries, Cisneros requested a judgment against Sanchez and Big Chicago in an amount in excess of \$50,000 on each of his three counts.

¶ 5 In 2011, the first trial was held but no transcript of the trial is included in the record on appeal. The record does include the completed jury verdict and three special interrogatories. On

August 18, 2011, the jury returned a verdict in favor of Cisneros on the dram shop count, and a verdict in favor of Big Chicago on the negligence count. The jury awarded Cisneros damages in the amount of \$136,947.40 for pain and suffering and medical expenses. The jury did not award any damages to Cisneros for disfigurement resulting from the injury or for loss of a normal life.

¶ 6 The first special interrogatory asked the jury if Cisneros actively contributed to or procured the alleged intoxication of Sanchez. The second special interrogatory asked the jury if the assault on Cisneros by Sanchez was reasonably foreseeable. The jury responded "no" to each of these interrogatories. Finally, the jury answered a third special interrogatory, which read as follows: "Was the assault by Jose Sanchez the sole proximate cause of the incident?" The jury responded "yes" to this interrogatory. The trial court's order, which entered judgment on the jury's verdicts, also indicated that Sanchez was voluntarily dismissed prior to the close of all evidence pursuant to a motion filed by Cisneros, which we have not located in the record on appeal.

¶ 7 Cisneros and Big Chicago both filed posttrial motions. Big Chicago sought judgment notwithstanding the verdict in light of the jury's response to the "sole proximate cause" special interrogatory claiming that the jury's answer to that interrogatory was inconsistent with the verdict in favor of Cisneros on the dram shop count. Alternatively, Big Chicago requested a new trial because the jury's verdict, which awarded no damages for loss of a normal life, was inconsistent and reflected a compromise verdict.

¶ 8 Cisneros also filed a posttrial motion requesting a new trial against Big Chicago on the negligence count. But the ground on which Cisneros sought a new trial on the negligence count actually attacked the jury's verdict on the dram shop count. Like Big Chicago, Cisneros argued

that in light of the nature of his injuries, the jury's failure to include in the itemized verdict any sum for disfigurement or loss of a normal life was improper.

¶ 9 On February 22, 2012, following briefing and oral arguments, the trial court ordered a new trial on all of the issues. The record does not include a transcript of the hearing on the parties' posttrial motions. Cisneros filed a motion to reconsider the trial court's order as it related to the dram shop verdict and clarified that he sought a new trial only on his negligence claim. The trial court denied the motion for reconsideration on May 11, 2012.

¶ 10 A second trial was held in 2012, but the record also does not include a transcript of the trial. Big Chicago again propounded a sole proximate cause interrogatory, this time clarifying that the interrogatory related only to the negligence claim and omitting any reference to "the incident." The interrogatory read: "As to count II for negligence, was the conduct of Jose Sanchez the sole proximate cause of plaintiff's injury?" On July 19, 2012, the jury returned a verdict in favor of Big Chicago on both the dram shop and negligence counts. In response to the special interrogatory, the jury found that Sanchez' conduct was the sole proximate cause of Cisneros' injuries.

¶ 11 On August 20, 2012, Cisneros filed a posttrial motion requesting a new trial on both counts, stating that the court confused the jury by giving the sole proximate cause interrogatory. On February 15, 2013, the trial court denied Cisneros' motion for a new trial. This appeal followed.

¶ 12 On appeal, Cisneros seeks to reinstate the jury verdict from the first trial which found Big Chicago liable under the dram shop count and awarded nearly \$137,000 in damages. Cisneros insists there was no basis for a new trial on the dram shop claim. The crux of Cisneros' argument is that in the first trial, the special interrogatory answers were consistent with the general verdict

in his favor on the dram shop count and, therefore, the trial court should not have granted a new trial.

¶13 A motion for a new trial calls upon the trial court to weigh the evidence and determine if the jury verdict is contrary to the manifest weight of the evidence. *Lawlor v. North America Corp. of Illinois*, 2012 IL 112530, ¶ 38. On review, we will not reverse a trial court's ruling on a motion for a new trial unless the denial constitutes an abuse of discretion. *Id.*; see also, *Cardona v. Granado*, 377 Ill. App. 3d 379, 385 (2007); *Winters v. Kline*, 344 Ill. App. 3d 919, 925 (2003). We have recognized that a trial court's decision on a motion for a new trial is entitled to deference because "the trial court has had the opportunity to consider the conduct of the trial as a whole, and therefore, is in a superior position to consider the effects of errors which occurred, the fairness of the trial to all parties, and whether substantial justice was accomplished. Greater latitude is allowed a trial court in granting a new trial than in denying a new trial." *Smith v. City of Evanston*, 260 Ill. App. 3d 925, 933 (1994).

¶ 14 Cisneros claims the order granting a new trial was based on the trial court's conclusion that there was an irreconcilable inconsistency between the jury's answer to the sole proximate cause interrogatory and its general verdict in his favor on the dram shop claim. But as Big Chicago points out, had the trial court accepted this alternative argument raised in Big Chicago's posttrial motion, the result would have been entry of judgment in favor of Big Chicago notwithstanding the verdict on that count. See *Simmons v. Garces*, 198 Ill. 2d 541, 574 (2002) (affirming judgment in favor of defendant based on irreconcilable conflict between answer to special interrogatory and general verdict in favor of plaintiff). Thus, because any inconsistency between the special interrogatory answer and the general verdict could not have served as the

basis for the trial court's order granting a new trial, we must examine whether the other grounds advanced by the parties in their respective motions for a new trial warranted that relief.

¶ 15 Because the trial court granted a new trial on both the dram shop and negligence counts, we must assume, in the absence of any record evidence to the contrary, that the trial court accepted the argument advanced by *both* parties in their respective posttrial motions that the jury's verdict was a compromise because it failed to include elements of damage - disfigurement and loss of a normal life - that were supported by the evidence. And while Cisneros' motion sought a new trial only on the negligence count, the argument he advanced attacked the insufficiency of the verdict rendered on his dram shop claim. In particular, Cisneros argued that although his "scarring due to the subject occurrence was undeniable, the jury failed to award him even a minimal amount in compensation." There was only one verdict to which that argument could have been directed. So despite the fact that Cisneros sought a new trial only on his negligence claim, the trial court, based on both his and Big Chicago's arguments, could have concluded that a new trial was warranted due to a compromise verdict. "A jury verdict that indicates compromises were made on damages and liability cannot be allowed to stand."

Cardona, 377 Ill. App. 3d at 385 citing *Winters*, 344 Ill. App. 3d at 926.

¶ 16 Determining whether the jury's verdict in favor of Cisneros was the product of a compromise would have entailed the trial court's assessment of the strength of the evidence regarding Big Chicago's dram shop liability (*e.g.*, how many drinks Sanchez had consumed and whether he was intoxicated at the time he attacked Cisneros) as well as the evidence relating to the permanent and disabling nature of Cisneros' injuries. Given that we have not been provided a transcript of the first trial, we will not assume that the trial court erred in weighing the evidence and we thus have no basis to conclude that the trial court abused its discretion in granting a new

trial. "[T]o support a claim of error, the appellant has the burden to present a sufficiently complete record. [citations omitted] *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005). Where the record is not complete, any doubts which might arise from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). As a reviewing court, "we must assume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law. *Corral*, 217 Ill. 2d at 157.

¶ 17 Further, because Cisneros has not included in the record on appeal a transcript or bystander's report of the second trial, we likewise are unable to address his contention that the verdicts in favor of Big Chicago on both the dram shop and negligence claims were contrary to the manifest weight of the evidence. Consequently, Cisneros' argument on this point must fail.

¶ 18 For the above reasons, we affirm the judgment entered on the jury's verdicts in favor of Big Chicago.

¶ 19 Affirmed.