2018 IL App (1st) 170574-U
No. 1-17-0574

SECOND DIVISION
March 27, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HARVEY POPOLOW,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14 L 3694
	)	
CITY OF CHICAGO,	)	The Honorable
	)	Thomas E. Flanagan and
Defendant-Appellee.	)	James P. Flannery,
	)	Judges Presiding.
	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Where the plaintiff failed to contest the jury's finding of no proximate cause, the plaintiff was not entitled to judgment notwithstanding the verdict or a new trial. The trial court did not err in admitting expert testimony that the plaintiff's pre-existing Parkinson's Disease likely contributed to his fall, when said opinion was based on a review of the plaintiff's medical records and was admitted on the issue of proximate cause, not damages.

¶ 2 Plaintiff, Harvey Popolow, brought a negligence suit against defendant, City of Chicago ("City"), alleging that he broke his ankle after stepping into a snow-covered pothole on one of the City's downtown streets. The jury returned a verdict in favor of the City. Following an

unsuccessful posttrial motion, plaintiff brought this appeal in which he argues that (1) the trial court erred in denying his posttrial motion for judgment notwithstanding the verdict or, in the alternative, a new trial, and (2) the trial court erred in admitting evidence of plaintiff's pre-existing Parkinson's Disease. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts that are necessary to our disposition.

¶ 5 Plaintiff instituted this premises liability matter by filing suit against the City, alleging that as he was walking to his vehicle parked on North Stetson Drive on February 10, 2014, he stepped off the curb and into a snow-covered pothole, which then caused him to fall and break his ankle. Plaintiff claimed that the City's negligence caused his injury when they failed to properly maintain that portion of North Stetson Drive where he fell.

¶ 6 Prior to trial, plaintiff filed several motions *in limine* related to his pre-existing Parkinson's Disease. First, he sought to exclude any evidence regarding a fall he had several months prior to his injury and the physical therapy he underwent as a result of the previous fall. He also sought to exclude any evidence that he had been characterized as a "fall risk" by his physical therapist. Next, plaintiff sought to bar the testimony of the City's expert, Dr. Michael Rezak, who was to testify that plaintiff's Parkinson's Disease made him more vulnerable to falling and that his balance issues resulting from his Parkinson's Disease more likely than not contributed to his fall. Plaintiff argued that Rezak's testimony should be excluded because Rezak lacked factual foundation for his opinions, in that he had not read plaintiff's deposition describing the fall, did not know the timeline of the fall, did not know how many steps plaintiff took before falling, etc. Plaintiff also argued that Rezak's testimony should be excluded pursuant to the eggshell plaintiff rule, which holds a negligent defendant liable for all injuries

caused, even if the injury is an aggravation of a pre-existing condition. Finally, plaintiff requested that any evidence at all of his Parkinson's Disease be excluded because there was no causal connection between the condition and plaintiff's broken ankle.

¶ 7 After arguments by the parties, the trial court ruled that although evidence regarding plaintiff's prior fall would not be admitted, evidence regarding his physical therapy for treatment of balance and gait issues would be admitted. Rezak's testimony would be allowed with respect to plaintiff's Parkinson's Disease increasing his likelihood of falling, but would not be allowed to decrease any recovery plaintiff might receive.

¶ 8 At trial, Stephanie Penny Paulen, plaintiff's physical therapist, testified that she began treating plaintiff in November or December 2013, following a referral from the plaintiff's treating neurologist based on balance and gait issues. At that time plaintiff was having difficulty with walking, balance, and flexibility, which was not unusual for a person with Parkinson's Disease. Plaintiff reported that he had experienced a regression in his gait over the preceding six months. He felt like he would lose his balance and his calves would tighten up in an effort to keep his balance. At the initial evaluation of plaintiff, despite plaintiff passing the objective Fullerton Advanced Balance test, Paulen characterized plaintiff as a fall risk based on her observations of plaintiff at that time. In January 2014, plaintiff reported that he was unable to walk more than a block or two before he would freeze up. By January 28, 2014, Paulen characterized plaintiff as an "extreme fall risk" based on how he presented that day—with "the shuffling and the gait, uncontrolled gait."

¶ 9 Plaintiff testified that on the day of his accident, he walked north on North Stetson Avenue to where his car was parked, facing south. Plaintiff intended to walk in front of his car to the driver's side. As he stepped off the curb to do so, he placed his right foot on the ground.

He then placed his left foot into a snow-covered pot hole and he went to the ground. He landed on his rear, with his back to the front of his car. He was facing the truck parked in front of his car, with the street to his left and the sidewalk to his right. He remained seated in that position until his wife, who worked in a nearby building, arrived five minutes later. Plaintiff denied ever having any balance issues prior to his injury.

¶ 10 Jill Hurwitz, plaintiff's wife, testified that when she arrived to assist her husband, she found him propped against the rear passenger door handle of a car midway down the block. The car did not belong to the plaintiff.

¶ 11 Rezak testified that he was a neurologist who specialized in movement disorders, with his most frequent patients being those with Parkinson's Disease. He had been treating patients with Parkinson's Disease since 1990. Parkinson's Disease is a progressive neurological disease characterized by tremors, stiffness, slowness, and gait problems. Although the symptoms progressively become worse over time, they also can change from day to day and even hour to hour. The symptoms, however, never go away permanently.

¶ 12 With respect to plaintiff's condition, Rezak testified that he had conducted a review of plaintiff's medical records. Although plaintiff was diagnosed with Parkinson's Disease in 2009, he exhibited symptoms as early as 2007. At the time of plaintiff's accident, he was in Stage 2 of his disease, which Rezak described as exhibiting symptoms on both sides of his body but was able to stop himself during a balance test in which the doctor pulls backwards on him. Rezak explained that the five-stage staging system used for Parkinson's Disease was "very crude and very gross" and did not take into consideration many important symptoms a Parkinson's Disease patient might exhibit.

¶ 13 Rezak reviewed the notes from plaintiff's physical therapy. In them, he noted that in mid-January 2014, plaintiff complained of unsteady walking, where plaintiff would "fall[] into baby step propulsion mode where his entire body takes off forward, and he has to grab onto an object for stability." In the treatment days leading up to plaintiff's injury, he continued to exhibit balance issues and difficulty controlling his gait. Rezak testified that based on his review of plaintiff's medical records, it was his opinion, to a reasonable degree of medical certainty, that plaintiff's Parkinson's Disease-related balance issues more likely than not contributed to his fall on February 10, 2014. Rezak further explained the basis for his opinion:

> "Again, his physical therapy notes clearly state that his gait and balance are poor. He needs a gait belt. He shuffles. He festinates. He has gait freezing. And the fact that he manifests these things and has Parkinson's reaction time to sudden and unexpected changes in position are much slower than they would be for someone who does not have Parkinson's disease."

¶ 14 On cross-examination, Rezak acknowledged that he did not review plaintiff's deposition testimony and did not know the exact sequence of events leading up to plaintiff's fall. He also acknowledged that Dr. Goetz, plaintiff's treating neurologist, never specifically wrote in his notes that plaintiff was a fall risk.

¶ 15 Several other witnesses testified, including plaintiff's friend, who photographed the pothole that plaintiff alleges caused his fall; a couple of engineers who had previously inspected the road where plaintiff fell; and a City employee. Two additional doctors testified by way of video evidence deposition: Dr. Ann Allie, who treated plaintiff at the rehabilitation center that plaintiff stayed at during his recovery, and Dr. Michael Stover, the orthopedist who treated plaintiff's ankle. The videos that were played for the jury were not included in the record on

appeal. Although a transcript for an evidence deposition of Stover appears in the record, it is not apparent whether it is the same evidence deposition as the one played for the jury. There is no transcript of Allie's evidence deposition in the record.

¶ 16 After closing arguments, the matter was submitted to the jury. Following deliberations, the jury returned a verdict in favor of the City. The jury also answered several special interrogatories submitted by the parties. In those special interrogatories, the jury specifically found that the City's negligence, if any, was not the proximate cause of plaintiff's injury; the City did not know nor in the exercise of ordinary care should have known of the condition and the risk of the condition where plaintiff fell; and the condition at the location where plaintiff fell did not present an unreasonable risk of harm to people on the date of plaintiff's fall.

¶ 17 Plaintiff filed a "Motion for JNOV or New Trial," arguing that the jury's verdict was against the manifest weight of the evidence and that the trial court erred in admitting evidence of his Parkinson's Disease. The trial court denied plaintiff's motion, and he filed this timely appeal.

¶ 18 ANALYSIS

¶ 19 On appeal, plaintiff argues that the trial court should have granted him judgment notwithstanding the verdict or a new trial, because he established all of the elements of his premises liability claim. In addition, plaintiff contends that the trial court erred in admitting Rezak's testimony on plaintiff's pre-existing Parkinson's Disease, because Rezak lacked a factual foundation for his opinion and because it violated the eggshell plaintiff rule. Neither of these contentions has any merit.

¶ 20 Judgment Notwithstanding the Verdict/New Trial

¶ 21 First, with respect to his contention that he was entitled to judgment notwithstanding the verdict or a new trial, plaintiff argues that he established all of the elements of a claim for

premises liability. A plaintiff to a premises liability claim must establish the following six elements:

> "(1) A condition on the property presented an unreasonable risk of harm to people on the property;
>
> (2) The defendant knew or in the exercise of ordinary care should have known of both the condition and the risk;
>
> (3) The defendant could reasonably expect that people on the property would not discover or realize the danger or would fail to protect themselves against such danger;
>
> (4) The defendant was negligent in one or more ways;
>
> (5) The plaintiff was injured; and
>
> (6) The defendant's negligence was a proximate cause of the plaintiff's injury."

Hope v. Hope, 398 Ill. App. 3d 216, 219 (2010). On appeal, plaintiff asserts, without any citation to the record, that only elements (1), (2), and (4) were at issue at trial, and, accordingly, only addresses these issues on appeal. In fact, plaintiff does not even include element (6)—proximate cause—as an element of his cause of action, despite purporting to quote the issues instruction to the jury, which clearly included element (6). Plaintiff's failure to address the proximate cause element of his claim is fatal to this appeal.

¶ 22 Here, the jury specifically found, among other things, that the City's negligence, if any, was not the proximate cause of plaintiff's injuries. Plaintiff has made absolutely no argument on appeal to refute this finding, even after the City raised this very point in its brief on appeal. Given the jury's specific finding that no proximate cause existed between the City's alleged negligence and plaintiff's injury, and given that plaintiff does not contend on appeal that the jury's finding in that respect was against the manifest weight of the evidence, we have no basis

to conclude that plaintiff was entitled to judgment notwithstanding the verdict or a new trial. See *Fisher v. Crippen*, 144 Ill. App. 3d 239, 243 (1986) ("Proximate cause is also indispensible to a negligence cause of action.").

¶ 23 Even if there were no special interrogatories, we would still be left with a general verdict in favor of the City. Where a general verdict is returned and multiple theories were presented to the jury, the verdict must be upheld if there was sufficient evidence to support any one of the theories. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 101 (2010). In this case, the City clearly challenged the element of proximate causation. For example, the City presented Rezak's testimony that plaintiff's Parkinson's Disease more than likely contributed to his fall. In addition, in closing arguments, the City argued, "Now, the plaintiff also has to prove that the City's negligence was a proximate cause of his injury. Again, it is unclear what exactly happened and what caused the plaintiff's accident. He said one thing, and then his wife said something else." It also argued, "However, the City does dispute that it is legally responsible for the injury. And, again, it's because it's unclear as to what really happened, given that the husband says one thing and the wife says one thing."

¶ 24 Again, as stated above, plaintiff does not make any argument that he presented sufficient evidence at trial to sustain a finding of proximate cause in his favor. Accordingly, even if the special interrogatories did not exist and the jury had simply returned a general verdict in favor of the City, plaintiff has still failed to make any argument as to why the verdict should not be sustained on the City's theory of no proximate cause.

¶ 25 We note that the primary issue at trial regarding proximate cause was whether the snow-covered pothole or plaintiff's Parkinson's Disease caused plaintiff to fall and break his ankle. Our conclusion that plaintiff has failed to refute the jury's finding of no proximate cause is in no

way intended to imply that it is impossible for a person with Parkinson's Disease to step into a snow-covered pothole and fall and break his or her ankle as a result, without that person's Parkinson's Disease having contributed to the fall. In the present case, however, it appears that the jury found that whatever the cause of plaintiff's fall was, it was not the City's negligence. As plaintiff has given us no basis on which to disturb this finding, we cannot agree that he was entitled to judgment notwithstanding the verdict or a new trial.

¶ 26 We further note that the decision to argue on plaintiff's behalf that he was entitled to judgment notwithstanding verdict or a new trial without disputing the jury's finding of no proximate cause was a strategy doomed to fail from the start. It is, without question, one of the most fundamental tenets of law that one must prove every element of his or her claim in order to be entitled to judgment. It is also without question that a claim for premises liability—and every other negligence based cause of action, for that matter—requires proof that the plaintiff's injury was proximately caused by the defendant's negligence. Thus, it was a wasted effort for plaintiff's counsel to have spent the effort and time to argue the evidence regarding whether the pothole was unreasonably dangerous, whether the City had notice of the pothole, and whether the City failed to maintain or repair the pothole, while failing to make any effort to refute the jury's specific finding of no proximate cause.

¶ 27 Plaintiff's brief purported to lay out the elements plaintiff was required to prove to succeed on his claim by quoting the jury instruction given to the jury. Instead of fully quoting the instruction and identifying all six elements of plaintiff's cause of action, however, counsel chose to quote only five of the elements, leaving off the element of proximate cause. A check of the record reveals that the instruction given to the jury listed all six elements. Counsel also

stated that only elements (1), (2), and (4) were at issue at trial, completely omitting the fact that proximate cause was a predominant and very apparent issue in dispute at trial.

¶ 28 Finally, in its appellate brief, the City directly pointed out plaintiff's failure to refute the jury's finding of proximate cause and clearly argued that such a failure required us to affirm the judgment. Despite having his attention drawn specifically to the matter, counsel failed to make any mention of proximate cause or otherwise respond to the City in plaintiff's reply brief. Based on all of this, we are forced to conclude that the failure to address the jury's proximate cause finding was a deliberate decision by plaintiff's counsel.

¶ 29 Rezak's Testimony

¶ 30 Plaintiff's second argument—that the trial court erred in admitting Rezak's testimony regarding plaintiff's Parkinson's Disease—is equally without merit. Expert testimony is admissible if the expert is qualified by knowledge, skill, experience, training or education and the testimony would assist the trier of fact in understanding the evidence. *Yanello v. Park Family Dental*, 2017 IL App (3d) 140926, ¶ 44. An expert's opinion must have a sufficiently reliable foundation and may not be based on speculation or non-existent facts. *Id.* Although evidence of a pre-existing condition should not be admitted absent a causal connection with the claimed injury (*id.*), the expert's opinion need not be based on absolute certainty, but instead only on a reasonable degree of medical and scientific certainty (*Carter v. Johnson*, 247 Ill. App. 3d 291, 297 (1993)). In fact, an expert may "properly testify in terms of probabilities and possibilities based on facts assumed from the evidence" (*id.*), and "[a] physician may testify to what might or could have caused an injury despite any objection that the testimony is inconclusive" (*Geers v. Brichta*, 248 Ill. App. 3d 398, 407 (1993)). After all, it is the jury's task to determine the facts and the inferences to be drawn from those facts. *Id.* We review a trial

court's determination on a motion *in limine* for an abuse of discretion, which occurs when "the ruling is arbitrary or unreasonable or no reasonable person would agree with the position taken by the court." *Citibank, N.A. v. McGladrey and Pullen, LLP*, 2011 IL App (1st) 102427, ¶ 13.

¶ 31 Plaintiff complains that Rezak lacked factual foundation for his opinion that plaintiff's Parkinson's Disease more likely than not contributed to his fall, because (1) plaintiff's treating physician never characterized him as a fall risk; (2) Rezak never read plaintiff's deposition and thus lacked knowledge regarding the details of plaintiff's fall; (3) Rezak acknowledged there was no evidence that plaintiff's Parkinson's Disease was affecting him at the time of his fall; and (4) generally lacked any factual basis for his opinion that the Parkinson's Disease contributed to plaintiff's fall.

¶ 32 We cannot agree that the trial court's admission of Rezak's testimony was an abuse of discretion based on these contentions. First, although Rezak admitted that plaintiff's treating physician never wrote in his notes that plaintiff was a fall risk and classified plaintiff as being in stage 2 of his disease, Rezak also testified to multiple conclusions on the part of plaintiff's physical therapist that plaintiff was a fall risk or even an extreme fall risk. Rezak also explained that the classification system for Parkinson's Disease was very crude and failed to account for important variables. He also testified that classification of a patient as stage 2 simply meant that the patient was symptomatic on both sides of the body and had passed the pull test.

¶ 33 Second, Rezak's failure to read plaintiff's deposition and his lack of knowledge about how many steps plaintiff took before falling, the timing between the steps, etc., all go to the weight to be afforded to Rezak's testimony, not its admissibility. *Snelson v. Kamm*, 204 Ill. 2d 1, 27 (2003) ("[T]he basis for a witness' opinion generally does not affect his standing as an expert; such matters go only to the weight of the evidence, not its sufficiency."). Third, plaintiff's

contention that Rezak "agreed that there was no evidence to suggest Plaintiff's condition was affecting him in any way on the day of the incident, let alone at the time he was injured" overstates Rezak's testimony, as the pages of the record cited by plaintiff simply reflect that Rezak testified that he was unaware of the specific sequence of events leading to plaintiff's fall and was also not aware of plaintiff losing his balance that day prior to his fall. He did, however, testify that the specific symptoms a Parkinson's Disease patient might experience can wax or wane on a daily, even hourly basis, but that such symptoms are permanent, and that plaintiff complained of balance and gait issues in the weeks and months leading up to his fall.

¶ 34 Finally, plaintiff's general contention that Rezak lacked any factual basis for his opinion is refuted by Rezak's detailed testimony regarding his review of Paulen's treatment notes of plaintiff.[1] Throughout his testimony, Rezak explained how Paulen repeatedly found plaintiff to be a fall risk or extreme fall risk shortly before plaintiff's accident. Rezak also explained the symptoms that plaintiff consistently reported to Paulen prior to his accident—uncontrolled gait, festinating gait,[2] shuffling walk, walking limitations, propulsive gait, the need to grab objects for stability, etc. This was sufficient foundation for Rezak's opinion to warrant its admission, and we disagree that the trial court's admission of Rezak's testimony was arbitrary or fanciful, or that no reasonable person would agree.

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[1] Plaintiff's counsel fails to address Rezak's reliance on Paulen's treatment notes and Paulen's explicit conclusions that plaintiff presented an "extreme fall risk." In fact, counsel chose to not even include Paulen's trial testimony in his statement of facts. We strongly urge counsel to review the requirements of Supreme Court Rule 341, especially subsection (h)(6), which requires that an appellant include in the statement of facts "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment." The complete omission of Paulen's testimony regarding her treatment of plaintiff, when such treatment formed the basis of Rezak's opinion, is a clear violation of the requirement that all facts necessary to an understanding of the case be included. See *Kulchawick v. Durabla Manufacturing Co.*, 371 Ill. App. 3d 964, 967 n.1 (2007) (finding a violation of Rule 341(h)(6) where the party omitted all unfavorable facts from the statement of facts).

[2] A festinating gait is one that is marked by involuntarily short and accelerating steps.

¶ 35 Plaintiff also argues that Rezak's testimony lacked a causal connection between plaintiff's Parkinson's Disease and his injury, because Rezak agreed that plaintiff had stepped into a "trap," there was nothing plaintiff could have done to avoid the "trap," and anyone who stepped in it could have suffered the same injury. Again, plaintiff overstates Rezak's testimony. First of all, "trap" was a word used by plaintiff's counsel to describe the snow-covered pothole. At no point did Rezak independently characterize the pothole as a trap. Second, that Rezak agreed that plaintiff could not have avoided a hole he could not see is not the same as agreeing that the hole and not plaintiff's Parkinson's Disease was the cause of plaintiff's injury. After all, one can step in a hole without falling. Finally, although Rezak also agreed that he could not rule out the possibility that someone without Parkinson's Disease could have stepped in the pothole and sustained a broken ankle, he did not waver from his opinion that plaintiff's balance issues—which resulted from Parkinson's Disease—were likely a contributing cause of plaintiff's injury. See *Matuszak v. Cerniak*, 346 Ill. App. 3d 766, 773 (2004) ("[T]he admissibility of Dr. Davidson's opinion does not depend upon his ability to disprove every possible cause of plaintiff's injury.").

¶ 36 Plaintiff relies on *Yanello* in support of his position that Rezak's testimony was not admissible because it lacked an adequate foundation. In *Yanello*, the plaintiff brought suit against the defendant, alleging professional negligence after her dental implants failed. *Yanello*, 2017 IL App (3d) 140926, ¶ 1. The trial court admitted testimony from the defendant's expert that the plaintiff's pre-existing conditions of rheumatoid arthritis and osteopenia caused or contributed to the implants' failure. *Id.* at ¶ 44. On appeal, the appellate court found the admission of such testimony to be error, because there was no evidence that the plaintiff had ever been diagnosed with or treated for rheumatoid arthritis at the time of her implants. *Id.* at ¶ 45. In

addition, although there was evidence that the plaintiff had osteopenia in her forearm, there was no evidence that she had it in her maxilla. *Id.* Accordingly, the appellate court concluded that there was insufficient foundation to establish the reliability of the expert's opinion. *Id.*

¶ 37 *Yanello* is clearly distinguishable. There was ample evidence here that plaintiff had been diagnosed with and was being treated for Parkinson's Disease for years leading up to and in the weeks right before his accident. Moreover, there was evidence from his treating physical therapist that the plaintiff qualified as an "extreme fall risk" just a couple of weeks prior to his accident and that he had been receiving treatment for balance issues for months leading up to his accident. Although plaintiff's treating physician might not have expressly qualified him as a fall risk, he clearly believed that plaintiff had some issues with balance, as that was the reason he referred plaintiff to physical therapy in the first place.

¶ 38 Finally, plaintiff contends that the trial court erred in admitting Rezak's testimony because it was irrelevant in light of the eggshell plaintiff rule. Under the eggshell plaintiff rule, a defendant is liable for all of the damages proximately caused by his negligence, even if the plaintiff's pre-existing condition results in the plaintiff suffering an injury that would not ordinarily be reasonably foreseeable. *Colonial Inn Motor Lodge, Inc. v. Gay*, 288 Ill. App. 3d 32, 45 (1997); see also *Lough v. BNSF Railway Co.*, 2013 IL App (3d) 120305, ¶ 22. According to plaintiff, Rezak's testimony that plaintiff's Parkinson's Disease made him more vulnerable to the type of injury he suffered when he stepped in the pothole violated the eggshell plaintiff rule, as did the City's argument that the City was not liable if plaintiff's Parkinson's Disease played a role in causing plaintiff's injury.

¶ 39 Plaintiff's argument fails for several reasons. First, Rezak did not testify that plaintiff's Parkinson's Disease made him more vulnerable to the type of injury he sustained—a broken

ankle—but instead that it made him more vulnerable to falling. In other words, Rezak did not testify that plaintiff's injury or *damages* were greater as a result of his Parkinson's Disease, but rather that his Parkinson's Disease was likely a *proximate cause* of his fall. Plaintiff appears to conflate damages and proximate cause when it comes to the application of the eggshell plaintiff rule. To be clear, the eggshell plaintiff rule is a damages rule, not a causation rule; it requires responsibility by the defendant for all damages caused by his negligence, even if they were greater than normal because of the plaintiff's pre-existing condition, but it does not require that the defendant be held liable for injuries caused solely by the plaintiff's pre-existing condition and not the defendant's negligence.

¶ 40 With this distinction in mind, we conclude that plaintiff's contention that Rezak's testimony violated the eggshell plaintiff rule must also fail because the trial court did not admit Rezak's testimony on the issue of damages and because, once admitted, Rezak's testimony was not used for that purpose. Prior to trial, plaintiff brought a motion *in limine* to exclude Rezak's testimony based on the eggshell plaintiff rule. The trial court granted this motion and specifically ruled that Rezak's testimony about plaintiff's Parkinson's Disease could not be used to lower the amount of plaintiff's damages. As discussed, Rezak never testified that plaintiff should receive less damages as a result of the Parkinson's Disease, but instead testified that the Parkinson's Disease was a cause of plaintiff's fall. Similarly, the City did not argue that plaintiff's damages should be reduced because of the Parkinson's Disease, but that plaintiff fell because of the balance issues caused by the Parkinson's Disease, not because of the City's alleged negligence.

¶ 41 In sum, we conclude that plaintiff was not entitled to judgment notwithstanding the verdict or a new trial because he did not make any argument that the jury's finding of a lack of

proximate cause was against the manifest weight of the evidence. In addition, we conclude that the trial court did not abuse its discretion in admitting Rezak's testimony on the issue of proximate cause, because Rezak's opinion was based on his expert knowledge of Parkinson's Disease and a review of plaintiff's medical records, which indicated that plaintiff was an extreme fall risk shortly before his accident. We also conclude that Rezak's testimony did not violate the eggshell plaintiff rule, because it was not admitted or used to decrease plaintiff's claimed damages, but instead was admitted on the issue of proximate cause.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 44 Affirmed.