2011 IL App (1st) 100146–U

FIRST DIVISION
August 15, 2011

No. 1-10-0146

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALIZABETH HANA, Individually and as Special Administrator of the Estate of Mary Hana, deceased, and ELVIN HANA,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellees,	)	
v.	)	No. 05 L 7692
DR. ALBERT CHAMS, DR. JOYCE CHAMS, and CHAMS WOMEN'S HEALTH CARE, S.C.,	)	Honorable Thomas E. Flanagan,
Defendants-Appellants.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Hoffman concur with the judgment.

ORDER

HELD: On appeal from jury verdict in favor of the plaintiffs in medical malpractice lawsuit, the trial court did not err in denying the defendants' posttrial motion for a new trial. The defendants did not establish that they were prejudiced by: (1) the introduction of hearsay testimony, (2) the presentation to the jury of the full amount of the plaintiffs' medical expenses, or (3) the closing arguments of the plaintiffs' counsel.

¶ 1 The instant medical malpractice suit was filed by the plaintiffs-appellees, Alizabeth Hana, individually and as special administrator of the estate of Mary Hana, deceased, and Elvin Hana (collectively, the plaintiffs), against the defendants-appellants, Dr. Albert Chams (Dr. A. Chams),

Dr. Joyce Chams (Dr. J. Chams), and Chams Women's Heath Care, S.C. (collectively, the defendants). The suit seeks to recover for deficient prenatal care provided by the defendants which resulted in physical injury to Alizabeth and the death of the plaintiffs' child, Mary. Following a jury trial, a multimillion dollar verdict was entered in favor of the plaintiffs. The defendants have now appealed the denial of their posttrial motion, claiming that they are entitled to a new trial due to prejudice resulting from: (1) the introduction of inadmissible hearsay testimony; (2) presentation of the plaintiffs' full medical expenses to the jury; and (3) improper comments made during the closing arguments of the plaintiffs' counsel. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 The initial complaint in this matter was filed by Alizabeth, individually and on behalf of her daughter, Mary, on July 13, 2005. In that complaint, it was generally alleged that Alizabeth was pregnant with Mary on August 27, 2004, when she was treated in the emergency room of Rush North Shore Medical Center (Rush North Shore) in Skokie, IL. Despite the fact that she exhibited signs of "HELLP" syndrome, Alizabeth was soon discharged from the emergency room after doctors at the hospital consulted with her obstetrician, Dr. A. Chams.

¶ 4 On August 29, 2004, Alizabeth returned to the Rush North Shore emergency room with similar symptoms, and Mary was delivered by Dr. A. Chams following an emergency cesarean section. However, due to various alleged instances of medical malpractice, both Alizabeth and Mary suffered personal and pecuniary injuries. The initial complaint sought to recover for these injuries from a number of named defendants, including Dr. A. Chams, Chams Women's Heath Care, S.C., a number of other doctors and medical practice groups involved in Alizabeth's and Mary's emergency

room care, and Rush North Shore.

¶ 5 After the initial complaint was filed, the parties engaged in extensive motion and discovery practice and the complaint was amended on a number of occasions. Mary's father, Elvin, was added as a plaintiff, and Dr. J. Chams, Dr. A. Chams' daughter, business partner, and a fellow obstetrician, was added as a defendant. Alizabeth was appointed as the special administrator of Mary's estate after Mary died on July 11, 2007, and a wrongful death claim was added to the complaint. A number of the defendants were either dismissed from the case or were awarded summary judgment in their favor, and three of the defendants settled with the plaintiffs.

¶ 6 Specifically, in late 2008, the trial court approved a $1.5 million settlement among the plaintiffs, Rush North Shore, and two of Rush North Shore's emergency room doctors (Dr. Vernon Koto and Dr. Robert Himmelman) and dismissed these three defendants from this suit. As a part of this settlement, payments were made to the plaintiffs' health insurers to settle any liens they might have on the plaintiffs' recovery in this case. This matter, therefore, proceeded to a jury trial in May of 2009, involving only the plaintiffs' claims against Dr. A. Chams, Dr. J. Chams, and their joint-obstetrics practice group, Chams Women's Heath Care, S.C.

¶ 7 At trial, the evidence established that Alizabeth discovered she might be pregnant in July of 2004. In early August she visited her obstetrician, Dr. A. Chams, and it was determined that she may have been as many as five months pregnant at the time. Alizabeth was also diagnosed with low amniotic fluid, a condition that, somewhat, increased the risk of her pregnancy. Additionally, a lab report prepared on August 13, 2004, indicated that Alizabeth's level of platelets, a part of the blood involved in clotting, was below normal. Alizabeth was ordered to complete a number of intermittent

non-stress tests to monitor the status of her pregnancy.

¶ 8 Sometime between 3 a.m. and 4 a.m. on August 24, 2004, Alizabeth went to the Rush North Shore emergency room after experiencing abdominal pain. Alizabeth was initially treated by a triage nurse, Ms. Mary Hamester, and the hospital's night emergency room doctor, Dr. Koto. She was given pain medication and an antacid. Dr. Koto, thereafter, contacted Dr. A. Chams, informing him that Alizabeth had come into the emergency room complaining of abdominal pain, was now responding to treatment, and was going to be sent home. Dr. A. Chams did not ask for any other information or request any additional testing at that time.

¶ 9 As Alizabeth was preparing to leave the emergency room around 5:30 a.m., she began to feel nauseous, her abdominal pain returned, and she vomited. Dr. Koto reevaluated Alizabeth, started her on intravenous fluids, and ordered a blood test. Partial results of the blood test were available shortly after 6 a.m., and revealed that Alizabeth's level of liver enzymes was elevated.

¶ 10 Dr. Koto again contacted Alizabeth's obstetrician, although this time he spoke with Dr. J. Chams. The contents of this conversation were disputed at trial. Dr. Koto testified he relayed Alizabeth's condition to Dr. J. Chams, including the high level of liver enzymes in her blood, and that Dr. J. Chams instructed him to have an ultrasound exam performed to check the functioning of Alizabeth's gallbladder. However, Dr. J. Chams denied that Dr. Koto informed her about the liver enzymes during this telephone call. She testified Dr. Koto only indicated that Alizabeth had exhibited abdominal pain and had vomited, something that was not unusual during pregnancy. Dr. J. Chams testified she was not told about any blood test results nor did she ask about any such tests, as there was no reason to do so on the basis of the information she had received. Instead, she ordered

an ultrasound.

¶ 11 Ms. Hamester testified she observed Dr. Koto's second telephone call on August 27, 2004. While she could not hear what was said and did not know whether Dr. Koto spoke with Dr. A. Chams or Dr. J. Chams, Ms. Hamester testified over a defense objection that Dr. Koto told her he had spoken with "Dr. Chams" and that an ultrasound was being ordered because of the elevated liver enzyme levels.

¶ 12 Dr. Koto's overnight shift at the hospital ended at 7 a.m., and he was replaced by Dr. Himmelman. Both Dr. Koto and Dr. Himmelman testified they discussed Alizabeth's condition at the time of the shift change. Both also testified Dr. Koto informed Dr. Himmelman that Dr. J. Chams had been contacted and had been informed of Alizabeth's condition, including her elevated liver enzyme levels. Each further testified the ultrasound was requested by Dr. J. Chams in order to check on the functioning of Alizabeth's liver and gallbladder. Dr. Koto further instructed Dr. Himmelman to relay the results of the ultrasound to Dr. J. Chams, because that test would not be completed until after the ultrasound technician arrived at 7 a.m.

¶ 13 Later in the morning, Dr. Himmelman received additional results from Alizabeth's tests. While the ultrasound test revealed normal functioning, additional results from her blood test revealed a low platelet count. Dr. Himmelman testified he contacted Dr. A. Chams around 11:30 a.m., and, again, the contents of this conversation were disputed at trial. Dr. Himmelman testified he informed Dr. A. Chams of the results of the ultrasound and the liver enzyme tests. Dr. Himmelman was not certain if he informed Dr. A. Chams of Alizabeth's low platelet count. Dr. A. Chams testified he was only informed of Alizabeth's normal ultrasound test and the fact that she was no longer experiencing

any pain. Dr. A. Chams testified he never asked anyone at Rush Medical Center about any of Alizabeth's blood test results, nor was he informed of those results on August 27, 2004.

¶ 14 As such, Dr. A. Chams had no objection when Alizabeth was discharged from the emergency room, shortly after 11:30 a.m., with instructions to complete a non-stress test and follow up with him in a couple of days. Both Dr. A. Chams and Dr. J. Chams testified had they been informed of the results of Alizabeth's blood tests on August 27, 2004, they would not have let her leave the hospital.

¶ 15 Alizabeth testified she was still in pain when she was discharged from the hospital on August 27, 2004. She also testified, as she was leaving the hospital that day, "Dr. Himmelman told me that I have to leave the hospital because of – he said according to your lab result, you should be admitted." This testimony had been the subject of a successful defense motion *in limine* and brought an immediate defense objection. The plaintiffs' counsel interrupted Alizabeth and instructed her not to discuss what Dr. Himmelman had told her before continuing with another line of questioning.

¶ 16 Alizabeth continued to experience abdominal pain for the next two days. She testified, early in the morning of August 29, 2004, she called Dr. A. Chams to complain about this pain. He informed her that the pain was not pregnancy related and she should call her primary care doctor. Alizabeth did so, and was instructed to go to the emergency room immediately. Elvin, therefore, drove Alizabeth back to Rush North Shore, where she arrived sometime between 4 a.m. and 5 a.m.

¶ 17 Alizabeth was again treated by Dr. Koto in the emergency room. Alizabeth was given pain medication and intravenous fluids, and a blood test was ordered. Around 6:30 a.m., she became pale and her blood pressure dropped. Alizabeth was sent to the obstetrics floor of the hospital so that her baby could be monitored with more specialized equipment. Dr. Koto contacted Dr. A. Chams, and,

while there was no dispute at trial that on this occasion, Alizabeth's blood test results were discussed. Dr. A. Chams testified this was the first time he learned of these results.

¶ 18 The two doctors concurred in a diagnosis of HELLP syndrome, and Dr. A. Chams indicated that Alizabeth should be prepared for an immediate delivery of her baby. Dr. A. Chams then left for the hospital and called his daughter and told her to meet him there. When Dr. J. Chams arrived at the hospital, she became aware that some of the hospital staff were indicating she had been aware of the blood test results two days earlier. Dr. J. Chams, again, denied such knowledge at trial, and testified she made a note in Alizabeth's patient records the following day indicating she had no such prior knowledge.

¶ 19 Shortly after arriving at the hospital, Dr. A. Chams delivered Mary by cesarean section. However, Alizabeth developed complications, suffered a liver hematoma, and spent several weeks in the hospital as a result of her injuries. Mary, approximately 27 weeks into her development, was born prematurely and had suffered oxygen deprivation and bleeding in her brain. This in turn caused other injuries, including brain damage and cerebral palsy. She had to be resuscitated and spent several months being treated in another hospital. After leaving the hospital, Mary required constant medical care at home until she died on July 11, 2007.

¶ 20 Dr. J. Chams testified HELLP syndrome was on a "continuum" of the possible types of preeclampsia, which was a blood pressure problem experienced by some pregnant women. The word "HELLP" is an acronym for the various test results that indicate the existence of this condition, which Dr. J. Chams described as follows: "H is hemolysis[,] it's when the blood kind of disintegrates and falls apart; EL is elevated liver enzymes; and LP is low platelets."

¶ 21 A number of expert witnesses also testified at trial. Two of the plaintiffs' experts, Dr. Jordan Perlow and Dr. Baha Sibai, as well as the defendants' expert, Dr. Steven Kooperman, agreed that, if the defendants were told about the blood test results on August 27, 2004, then they violated the standard of care by allowing Alizabeth to leave the hospital. Indeed, Dr. Perlow and Dr. Sibai testified, even if the defendants were only told about Alizabeth's elevated liver enzyme levels, they should have taken different actions. However, Dr. Sibai further opined that the defendants should also, on their own accord, have asked the emergency room doctors about any blood test results or ordered such tests. Dr. Perlow and Dr. Kopperman did not agree with this assessment.

¶ 22 All of the experts agreed that the only treatment for HELLP syndrome is to deliver the baby as soon as possible. Delivery of a premature baby should be delayed only if a mother's condition is sufficiently stable to permit the baby additional time to develop. Finally, another expert witness, Dr. Marcus Hermansen, testified on behalf of the plaintiffs and opined that Mary's injuries did not result from her prematurity. Rather, they were a result of the lack of blood flow Mary experienced just before and shortly after her birth.

¶ 23 After both parties rested and following closing arguments, the jury returned a general verdict in favor of the plaintiffs and against Dr. A. Chams, Dr. J. Chams, and Chams Women's Heath Care, S.C. The jury awarded a total of $6,171,118.67 in damages, and, pursuant to a posttrial motion, the trial court reduced this amount by $1,500,000 to account for the pretrial settlement. The defendants' subsequent posttrial motion for a new trial was denied, and they now appeal.

¶ 24 II. ANALYSIS

¶ 25 As noted above, on appeal, the defendants contend that the trial court should have granted

them a new trial because they were prejudiced by: (1) the introduction of inadmissible hearsay testimony from Ms. Hamester and Alizabeth; (2) the presentation of the plaintiffs' full medical expenses; and (3) improper comments made by the plaintiffs' counsel during closing arguments. We address each of these assertions in turn.

¶ 26 A. Standard of Review

¶ 27 A motion for a new trial is addressed to the sound discretion of the trial court, and the trial court's resolution of such a motion will not be disturbed absent a clear abuse of discretion. *Pecaro v. Baer*, 406 Ill. App. 3d 915, 918 (2010). To determine whether the trial court abused its discretion, we must consider whether the jury's verdict was supported by the evidence, or whether the losing party was denied a fair trial. *Bosco v. Janowitz*, 388 Ill. App. 3d 450, 461 (2009). " 'Generally, a party is not entitled to reversal based upon evidentiary rulings unless the error was substantially prejudicial and affected the outcome of the case.' " *Id*. at 462-63, quoting *Taluzek v. Illinois Central Gulf Railroad Co.*, 255 Ill. App. 3d 72, 83 (1993). Similarly, even improper arguments by counsel will not warrant a new trial without a substantial showing of prejudice. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 855 (2010). "Parties are entitled to a fair trial, not a perfect trial." *Id*.

¶ 28 B. Hearsay Testimony

¶ 29 We first consider the defendants' assertion that they were prejudiced by improper hearsay testimony provided by Ms. Hamester and Alizabeth. The defendants contend that Ms. Hamester was improperly allowed to provide hearsay testimony bolstering Dr. Koto's claim that he informed Dr. J. Chams about the liver enzyme test results on August 27, 2004. Additionally, they argue that, Alizabeth's testimony that she was told by Dr. Himmelman that her test results indicated she should

be admitted to the hospital, was also improper hearsay. We find that the defendants cannot establish that they were prejudiced by this testimony.

¶ 30 First, we agree with the plaintiffs that our review of this issue is precluded because the jury was presented with alterative theories of recovery, but returned only a general verdict for the plaintiffs. Section 2–1201(d) of the Code of Civil Procedure provides, in relevant part: "[i]f several grounds of recovery are pleaded in support of the same claim, whether in the same or different counts, an entire verdict rendered for that claim shall not be set aside or reversed for the reason that any ground is defective, if one or more of the grounds is sufficient to sustain the verdict ***." 735 ILCS 5/2–1201(d) (West 2008). Under the so-called "two-issue rule", therefore, a general jury verdict will not be reversed on appeal if the case involved two or more causes of action or theories of recovery and sufficient evidence - free from any alleged prejudice - existed to support at least one of those causes of action or theories. *Robinson v. Boffa*, 402 Ill. App. 3d 401, 406-07 (2010). This is because any reviewing court " 'will assume the jury found for the prevailing party on the issue which was error-free, unless it can be determined from the form of verdict that the error was prejudicial.' " *Id.* at 406, quoting *Tomlian v. Grenitz*, 782 So.2d 905, 906 (Fla. App. 2001). Thus, a "defendant cannot expect recourse where a plaintiff presents more than one theory of her case, the defendant does not request special interrogatories and the jury returns a general verdict." *Foley v. Fletcher*, 361 Ill. App. 3d 39, 50 (2005). The two-issue rule is applicable to assertions of prejudice resulting from the introduction of improper evidence. *Id.*; *Krklus v. Stanley*, 359 Ill. App. 3d 471, 479 (2005).

¶ 31 In this case, the jury was instructed on two separate theories of recovery. Specifically, the

plaintiffs asserted that the defendants were negligent because: (1) they "failed to diagnose and treat Alizabeth Hana for HELLP syndrome on August 27th, 2004"; or (2) they "failed to order blood tests or failed to inquire about blood test results on August 27th, 2004." However, the jury only returned a general verdict in favor of the plaintiffs and against the defendants. No special interrogatories or alternative verdict forms were either tendered to or returned by the jury with respect to these separate theories of recovery. As the defendants have not challenged the sufficiency of the evidence to support either theory, we cannot say that the defendants were prejudiced by the disputed testimony of Ms. Hamester and Alizabeth.

¶ 32 Specifically, Ms. Hamester's testimony that Dr. Koto informed Dr. J. Chams about the liver enzyme results on August 27, 2004, could only prejudice the defendants with respect to the first assertion of negligence; *i.e.*, that the defendants were told about the blood test results but failed to diagnose or treat Alizabeth for HELLP syndrome in light of that knowledge. It was not relevant to the contention that the defendants were negligent for simply failing to order or inquire about such blood tests. Additionally, the defendants' assertion that the testimony about Dr. Himmelman's comment somehow implied that Dr. A. Chams knew about the results and, nevertheless, discharged Alizabeth, could also only potentially prejudice the plaintiffs' first negligence theory. Under the two-issue rule, any prejudicial effect this testimony may have had with respect to the first theory of negligence does not permit this court to disturb the jury's general verdict in favor of the plaintiffs.

¶ 33 Moreover, we also find that the disputed testimony was merely cumulative of other evidence introduced at trial. "When erroneously admitted evidence is cumulative and does not otherwise prejudice the objecting party, error in its admission is harmless." *Greaney v. Industrial Commission*,

358 Ill. App. 3d 1002, 1013 (2005); *Nassar v. County of Cook*, 333 Ill. App. 3d 289, 303 (2002) (improper testimony does not warrant a new trial where testimony was cumulative of previously introduced testimony such that no prejudice can be established).

¶ 34 In this case, Ms. Hamester was not the only witness who testified Dr. Koto claimed to have told Dr. J. Chams about the liver enzyme results at the time Alizabeth was being treated in the emergency room. Dr. Himmelman also testified Dr. Koto had told him, at the time of the shift-change on August 27, 2004, that Dr. J. Chams had been so informed. While this testimony might also be considered improper hearsay, the defendants have never challenged Dr. Himmelman's testimony in this regard. "It is well established that when hearsay evidence is admitted without an objection, it is to be considered and given its natural probative effect." *People v. Parcel of Property Commonly Known as 1945 North 31st Street*, 217 Ill. 2d 481, 504 (2005).

¶ 35 Additionally, the notion that Alizabeth's August 27, 2004, blood test results indicated that further testing and treatment was required, was not an issue in dispute at trial. The only issue at trial was whether the defendants knew about these tests or had a duty to either order them or ask about them. All of the relevant witnesses, including the plaintiffs' and the defendants' experts and the defendants themselves, testified the blood test results indicated that Alizabeth had a medical issue that needed to be further addressed. Thus, Alizabeth's testimony regarding Dr. Himmelman's comments about the test results, was cumulative of this other overwhelming testimony, and was not prejudicial.

¶ 36 In the absence of any prejudice, therefore, we cannot say that the trial court abused its discretion in denying the defendants' posttrial motion on the basis of the testimony of Ms. Hamester

and Alizabeth.

¶ 37 C. Medical Expenses

¶ 38 We next address the defendants' contention that they were entitled to a new trial because the trial court allowed the plaintiffs to introduce evidence of their full medical expenses, despite those expenses having been previously reduced, and settled for a lower amount than originally billed.

¶ 39 Alizabeth and Hana incurred a total of $1,177,997.95 in medical expenses from various providers. According to agreements with the plaintiffs' private and public insurers, BlueCross BlueShield of Illinois and the Illinois Department of Heath Care and Family Services, these providers were actually paid only $831,970.30. In turn, as part of the plaintiffs' $1.5 million pretrial settlement with Rush North Shore, Dr. Vernon Koto, and Dr. Robert Himmelman, the plaintiffs' private and public insurers agreed to accept $453,543.58 in full satisfaction of their liens on any recovery by the plaintiffs. These liens were, thus, fully paid and satisfied out of the proceeds of the $1.5 million settlement before this case went to trial against the defendants.

¶ 40 The defendants, therefore, made three arguments to the trial court with respect to the plaintiffs' medical expenses. First, the defendants argued that the plaintiffs should not be able to introduced *any* evidence of their medical expenses because those bills have been fully paid and satisfied by the pretrial settlement. As such, the reasonable value of the plaintiffs' medical expenses had already been established, had been recovered by the plaintiffs, and the bills had been fully paid. Alternatively, if the plaintiffs were permitted to introduce evidence of the full $1,177,997.95 in medical expenses, the defendants asserted they should be able to introduce evidence that the plaintiffs' insurers accepted $453,543.58 in full satisfaction of their liens as evidence of the actual

reasonable value of the plaintiffs' medical treatment. Finally, the defendants argued that they should, at least, be able to challenge the reasonable value of the plaintiffs' medical treatment with evidence that the plaintiffs' medical providers accepted only $831,970.30 for that treatment.

¶ 41 Because it found that the defendants' assertions would violate the collateral source rule, the trial court rejected each of these contentions. The parties, therefore, stipulated to the admission of the full, billed amount of the plaintiffs' medical expenses in order to avoid requiring the plaintiffs to call witnesses to testify to the reasonableness of the value of those amounts. However, the parties agreed that the defendants were not waiving their right to raise these same issues on appeal. At trial, the defendants did not otherwise provide any evidence challenging the reasonableness of the value of the plaintiffs' treatment.

¶ 42 Over the years, our supreme court has offered varying underlying rationales for the collateral source rule and different rules for its implementation. See generally *Peterson v. Lou Bachrodt Chevrolet Co.*, 76 Ill. 2d 353 (1979); *Arthur v. Catour*, 216 Ill. 2d 72 (2005); *Wills v. Foster*, 229 Ill. 2d 393 (2008). With its most recent decision on the subject in *Wills*, however, those rationales and rules of implementation have been significantly clarified. Indeed, we find the *Wills* decision to be dispositive of the defendants' arguments on this issue.

¶ 43 " 'Under the collateral source rule, benefits received by an injured party from a source wholly independent of, and collateral to, the tortfeasor will not diminish damages otherwise recoverable from the tortfeasor.' " *Wills*, 229 Ill. 2d at 399, quoting *Arthur*, 216 Ill.2d at 78. This rule has both "evidentiary and substantive components." *Id*. at 400. As a substantive rule of damages the collateral source rule prohibits the reduction of a plaintiff's compensatory award by any amount a

plaintiff may have received from a collateral source, and as a rule of evidence, the rule precludes a jury from learning anything about collateral income. *Id*. "The rule has been described as an 'established exception to the general rule that damages in negligence actions must be compensatory.'" *Id*. at 399, quoting 25 C.J.S. Damages § 172 (2002).

¶ 44 As our supreme court has now made clear, Illinois follows a "reasonable-value approach" to the collateral source rule. *Id*. at 413. Under this approach, and as a substantive rule of damages, "[a]ll plaintiffs are entitled to seek to recover the full reasonable value of their medical expenses." *Id*. at 418-19. Furthermore, under this approach, " 'collateral benefits do not reduce the defendant's tort liability, even though they reduce the plaintiff's loss.' " *Id*. at 419, quoting *Arthur*, 216 Ill. 2d at 78. As such, a plaintiff may recover for the reasonable value of medical treatment even where that treatment is, in whole or in part, paid for by private insurance, by a governmental insurance program, or is provided gratuitously. *Id*. at 413, citing Restatement (Second) of Torts § 920A cmt. b, c (1979).

¶ 45 Furthermore, the evidentiary component of the collateral source rule provides that a plaintiff "may place the entire billed amount [of medical expenses] into evidence, provided that the plaintiff establishes the proper foundational requirements to show the bill's reasonableness." *Id*. at 414. In response, "defendants are free to cross-examine any witnesses that a plaintiff might call to establish reasonableness, and the defense is also free to call its own witnesses to testify that the billed amounts do not reflect the reasonable value of the services. Defendants may not, however, introduce evidence that the plaintiff's bills were settled for a lesser amount because to do so would undermine the collateral source rule." *Id*. at 418.

¶ 46 Pursuant to these principles, we find that the trial court properly allowed the plaintiffs to

introduce evidence of the full billed amount of their medical expenses. As our supreme court has made clear, the plaintiffs here were entitled to "recover the full reasonable value of their medical expenses." *Id*. at 418-19. The fact that collateral sources - such as the plaintiffs' insurance coverage or its pretrial settlement - may have reduced the amount the plaintiffs were obligated to pay, is simply irrelevant to the question of the actual reasonable value of those services because " 'collateral benefits do not reduce the defendant's tort liability, even though they reduce the plaintiff's loss.' " *Id*. at 419, quoting *Arthur*, 216 Ill. 2d at 78. Furthermore, the fact that these bills had been fully paid out of proceeds of the pretrial settlement does not alter this rule, and we note that the defendants received a set-off to the jury's verdict for the full amount of the $1.5 million settlement. Indeed, the *Wills* decision makes clear that the plaintiffs would be entitled to recover for the reasonable value of their medical treatment even if that treatment had been provided free-of-charge and the plaintiffs never incurred any liability at all. *Id*. at 413.

¶ 47 Moreover, while the defendants were free to challenge the reasonableness of the amounts billed with witness testimony or other evidence, they were absolutely precluded from introducing any evidence that the plaintiffs' bills were "compensated, even in part, by insurance" or were "settled for a lesser amount" as such evidence would "undermine the collateral source rule." *Id*. at 418. However, this is the only type of evidence that the defendants attempted to use in challenging the plaintiffs' bills at trial. As such, the trial court also properly prohibited the defendants from offering any evidence that those bills had been reduced *via* insurance or settled for a lower amount pursuant to the pretrial settlement.

¶ 48 D. Closing Arguments

¶ 49 Finally, we address the defendants' argument that they were prejudiced by improper comments made by the plaintiffs' counsel during closing arguments. This court has recently summarized the relevant legal principles applicable to this issue as follows:

> "Although improper argument and attorney misconduct can be the basis for granting a new trial, that determination is left to the sound discretion of the trial court and should not be disturbed on appeal absent an abuse of discretion. [Citations.] In arguing a case to the jury, counsel is allowed broad latitude in drawing reasonable inferences and conclusions from the evidence. [Citation.] Questions as to the prejudicial effect of remarks in closing statements are within the discretion of the trial court and the results are affirmed absent an abuse of discretion. [Citation.] Even improper arguments will not warrant reversal without a substantial showing of prejudice. [Citation.] Parties are entitled to a fair trial, not a perfect trial. [Citation.]
>
> The standard of reviewing a claim of improper argument is whether the argument was of such a character as to have prevented a fair trial. [Citation.] The trial court is in a unique position to gauge the effects of misconduct, having heard all of the testimony and arguments and having observed the parties and their effect on the jury. [Citation.] The attitude and demeanor of counsel, as well as the atmosphere of the courtroom, cannot be reproduced in the record, and the trial court is in a superior position to assess and determine the effect of improper conduct on the part of counsel. [Citation.] Where the jury hears an improper comment by counsel, the trial court's prompt action in sustaining an objection can cure the possible error.

> [Citation.] *** In addition, if the trial was fair as a whole and the evidence was sufficient to support a jury's verdict, a case will not be reversed upon review. [Citation.]" (Internal quotation marks omitted.) *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 854-55 (2010).

¶ 50 The defendants first contend that the plaintiffs' counsel improperly made reference to either the defendants' financial wherewithal, or the amount of their insurance coverage during his closing argument when he commented that the defendants had only "about $8 million to lose." As an initial matter, we note that the defendants have waived any challenge to this comment as they failed to object when it was made at trial. *Wilbourn*, 398 Ill. App. 3d at 855 (both an objection and a written posttrial motion raising improper argument are necessary to preserve that issue for appellate review).

¶ 51 Waiver aside, we do not find the defendants' argument convincing. Even the defendants' brief argues that, at most, this comment "alluded to", "invoked", "suggested", "implied", or was "an oblique reference to" the defendants' financial status or insurance coverage. When viewed in the context of the rest of the closing argument offered by the plaintiffs' counsel, however, it is clear that this comment was not even so tangential a reference, and it certainly does not warrant a new trial.

¶ 52 Specifically, the plaintiffs' counsel made this comment in the course of discussing the difference in the testimony regarding whether or not the defendants were informed about Alizabeth's blood test results on August 27, 2004; *i.e.*, the fact that the defendants claimed they had not been so informed and Dr. Koto and Dr. Himmelman said that they were. The plaintiffs' counsel then proceeded to compare the credibility of these witnesses, stating: "So the defense is, I guess, trust us. We're telling the truth. We've only got about $8 million to lose. I'll let [defense counsel] tell you

what it is about Dr. Koto and Dr. Himmelman - about what they have to gain or lose from coming in here and testifying against them, because I don't see it. I don't see a motivation or a bias either way." The plaintiffs' counsel, thereafter, asked the jury to return a verdict between $6 and $10 million.

¶ 53 We find that the comment about which the defendants now complain was not made in an attempt to highlight the defendants' financial status or the amount of their insurance coverage, but, rather, the fact that, unlike Dr. Koto and Dr. Himmelman, they had a significant financial *interest* in the trial. "The bias of a witness is always relevant for the purpose of discrediting that witness so as to affect the weight the jury is to give the testimony." *People v. Cochran*, 174 Ill. App. 3d 208, 211 (1988); see also, *Wheeler v. Sunbelt Tool Co., Inc.*, 181 Ill. App. 3d 1088, 1107 (1989) (a witness' financial interest in a litigation is relevant to establishing an interest, bias, or motive to testify falsely). The defendants were not prejudiced by this comment.

¶ 54 The defendants also contend that they were prejudiced when the plaintiffs' counsel improperly referred to his own personal experience and opinions during closing argument.

¶ 55 Specifically, during closing arguments, the plaintiffs' counsel questioned Dr. J. Chams' motivations for placing a notation in Alizabeth's chart - after Mary was born - that she had not been informed of Alizabeth's test results. After essentially asserting that Dr. J. Chams made this notation in an effort to protect herself from liability, the plaintiffs' counsel first commented: "I've never seen anything like this in 26 years." Defense counsel objected to this comment and the trial court sustained that objection, struck the comment from the record, and ordered the jury to disregard it. Immediately thereafter, the plaintiffs' counsel stated: "I'll let those notes and your notes about them

speak for themselves. That's what I think happened here." While the defendant now challenges this comment on appeal as well, defense counsel did not object to it at the time it was made at trial.

¶ 56 Finally, the plaintiffs' counsel returned to the issue of Dr. J. Chams' credibility during rebuttal, stating: "I struggled with whether or not I was going to do this today with this doctor. It was a hard decision for me to make, and I don't like standing here telling you this, I don't. I've never had to do it before. I'm very uncomfortable with it." Defense counsel objected, and the trial, again, sustained that objection and struck the personal opinions of the plaintiffs' counsel.

¶ 57 We cannot say that the these comments entitled the defendants to a new trial. In two instances, the trial court immediately sustained objections and struck the comments of the plaintiffs' counsel. As noted above, even where the jury "hears an improper comment by counsel, the trial court's prompt action in sustaining an objection can cure the possible error." *Wilbourn*, 398 Ill. App. 3d at 855. Furthermore, in the third instance, the defendants did not object to the comment at trial and, therefore, waived any challenge to it on appeal. *Id.* Finally, after reviewing the entire record, we cannot say that the trial court abused its discretion in refusing to order a new trial on the basis of these comments. As this court previously stated in *Wilbourn*, 398 Ill. App. 3d at 857, "[t]he trial court was able to observe the effect of the improper comments on the jury, and was in a position vastly superior to determine whether the improper comments denied [the defendants] a fair trial. The trial court determined that the comments did not deny [the defendant] a fair trial, and based upon the record before us, we cannot disturb that ruling."

¶ 58 III. CONCLUSION

¶ 59 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 60 Affirmed.