SECOND DIVISION
July 30, 2013

No. 1-12-1971

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FRED W. GRABS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County.
	)	
v.	)	No. 07 L 3417
	)	
SAFEWAY, INC., and	)	
DOMINICK'S FINER FOODS, L.L.C.,	)	Honorable
	)	William Gomolinski,
Defendants- Appellees.	)	Judge Presiding.

JUSTICE QUINN delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

O R D E R

¶ 1 *HELD*: The trial court did not err in denying plaintiff's motion for summary judgment. During the jury trial on plaintiff's claim of retaliatory discharge for exercising his rights under the Workers' Compensation Act, the trial court did not abuse its discretion in its evidentiary rulings. The trial court did not err in instructing the jury. The jury's verdict in favor of the employers was not against the manifest weight of the evidence and the trial court correctly denied both plaintiff's motion for a directed verdict and motion for judgment notwithstanding the verdict. We affirm the jury's verdict.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiff, Fred W. Grabs, appeals the jury verdict following an eight day trial that awarded judgment in favor of defendants, Safeway, Inc. and Dominick's Finer Foods, L.L.C., on his claim of retaliatory discharge in violation of section 4(h) of the Worker's Compensation Act (Act) (820 ILCS 305/4(h) (West 2006) which provides that "[i]t shall be unlawful for any employer *** to discharge *** an employee because of the exercise of his or her rights or remedies granted to him or her by this Act." 820 ILCS 305/4(h) (West 2006).

¶ 4 II. BACKGROUND

¶ 5 Plaintiff filed a worker's compensation claim on March 4, 2005, claiming he injured his back while working. Defendants approved his claim and paid plaintiff's medical bills. Defendants also paid plaintiff temporary total disability benefits while plaintiff was off work. After plaintiff was off work for almost a year, defendants requested that plaintiff be examined by an orthopedic surgeon who concluded on May 25, 2006, that plaintiff could return to work. Thereafter, defendants included plaintiff on the work schedule. Plaintiff's union knew he was on the work schedule. Plaintiff failed to call in, show up for work or exercise his rights to various leave options. The plaintiff's union took no action despite being informed that plaintiff had failed to call in his absences. Plaintiff was terminated for attendance violations in June 2006.

¶ 6 On April 3, 2007, plaintiff filed the instant complaint. Plaintiff filed a motion for summary judgment and submitted that defendants' actions constituted *per se* retaliatory discharge. Initially, the trial court denied plaintiff's motion but then, relying on *Hollowell v. Wilder Corp.*, 318 Ill. App. 3d 984 (2001), granted plaintiff's motion but certified the following question for interlocutory

appeal:

> "Does the Workers' Compensation Act give the Illinois Workers' Compensation Commission the exclusive authority to determine whether an injured employee may return to work, such that when an employer is faced with conflicting medical opinions from the employee's doctor and the employer's IME [independent medical examiner], the employer may not rely upon the IME opinion to terminate the employee under the employer's attendance policy for failing to return to work, before the Commission has adjudicated the pending dispute over the conflicting medical opinions?"

¶ 7 This court allowed the application for interlocutory appeal and on September 30, 2009 answered the certified question as follows:

> "[W]e find that when an employer is faced with conflicting medical opinions from the employee's doctor and the employer's IME, an employer may not rely solely on an IME in terminating an employee for failing to return to work or for failing to call in his absences. We decline to find that a *per se* standard exists to recover for a workers' compensation retaliatory discharge claim; rather, an employee must meet his burden of proof to show that his discharge was causally related to the exercise of his rights under the Act." *Grabs v. Safeway, Inc.*, 395 Ill. App. 3d 286, 301 (2009)

¶ 8 After reviewing this court's answer to the certified question, the trial court vacated its summary judgment in favor of plaintiff and set the case for trial by jury. Plaintiff filed a second motion for summary judgment. The motion was denied by the trial court stating that there was a genuine issue of material fact on the issue of causation for the fact finder to decide.

¶ 9 While this litigation was ongoing, in September 2008, plaintiff together with his union sought plaintiff's reinstatement after plaintiff's medical provider stated plaintiff could return to work with restrictions. Defendants reinstated plaintiff and by the time of trial in February 2012, plaintiff was reemployed with defendants for over three years. Plaintiff remains an employee of defendant today.

¶ 10 Plaintiff had originally filed a consolidated case with another employee, Rudolph Franek. The trial court severed the cases for trial. Plaintiff was allowed to file a second amended complaint on January 18, 2012, just prior to the start of trial.

¶ 11 An eight-day jury trial was held in February 2012 involving this plaintiff. A total of fifteen witnesses testified. The trial was to determine whether plaintiff's discharge was causally related to plaintiff's exercise of his rights under the Act. In other words, the jury was to decide whether defendants' motive or intent in dismissing the plaintiff was because plaintiff had filed a workers' compensation claim or whether the defendant-employer could establish that it had a valid, nonpretextual reason for the discharge.

¶ 12 The jury found in favor of defendants and against plaintiff. Plaintiff filed this timely appeal pursuant to supreme court rule 303. Ill. S. Ct. R. 303 (eff. June 4, 2008). On appeal, plaintiff contends that the trial court should not have vacated its prior entry of summary judgment in favor of plaintiff, and should have allowed his renewed motion for summary judgment, his motion

for directed verdict and his motion for judgment notwithstanding the jury's verdict. Plaintiff also contends the trial court erred in numerous ways when it ruled on objections regarding evidence during the trial and in instructing the jury which deprived the plaintiff of a fair trial.

¶ 13 III. TRIAL EVIDENCE

¶ 14 The defendants approved plaintiff's workers' compensation claim in March 2005 for a back injury. Plaintiff was on workers' compensation leave for over eleven months when, at defendants' request, plaintiff was examined by a board-certified surgeon who concluded that plaintiff could return to work. Defendants' risk management personnel received this report and sent an e-mail to plaintiff's supervisor, Mr. Mike Leitner, informing him that an "IME" concluded that plaintiff was able to return to work. Leitner was not involved in the administration of workers' compensation claims nor did he regularly communicate with any doctors. Leitner testified that he believed an "IME" was an independent doctor who decides disputes between other doctors. Leitner explained that his understanding of the e-mail was that it was meant to inform him that plaintiff would be returning to work. Pursuant to this e-mail, Leitner had plaintiff placed on the work schedule which subjected plaintiff to the defendants' attendance policies including plaintiff's responsibility to call in if he was not going to report to work as scheduled. Leitner testified that he believed plaintiff was provided notice that defendants expected him back at work.

¶ 15 It was uncontested at trial that plaintiff neither reported to work nor called in to say he would be absent. Leitner testified that he thought that maybe plaintiff's attorney had not yet been notified. After several days, Leitner began to code plaintiff's absences as "no call, no show" pursuant to the defendants' attendance policy.

¶ 16 Plaintiff failed to either show up or call in to say he would be absent on June 14 and June 15, 2006. Each day, Leitner testified he followed the normal business practice and generated an attendance warning that was placed in the plaintiff's union steward's mailbox that was on site. Both Leitner and the president of plaintiff's union agreed that the placement of an employee's attendance warning in a union steward's mailbox was the customary, accepted business practice for notifying an employee and his union of a workplace violation. Leitner assumed that the union would contact plaintiff regarding his attendance violations. The union did not contact Leitner. Plaintiff testified that his union never informed him that he was being charged with attendance violations prior to his termination.

¶ 17 Leitner testified that when neither the plaintiff nor plaintiff's union contacted him about the "no call, no show" attendance violations, he assumed plaintiff had no intention to resume his employment with defendants. Thereafter, Leitner issued the third and final "no call, no show" attendance violation letter. He had this final notice sent to plaintiff's home together with a termination notice. Leitner testified that he followed all standard procedures for attendance terminations.

¶ 18 Leitner had authority under the parties' collective bargaining agreement to also terminate plaintiff's medical and retirement benefits, however, Leitner did not take this additional action. Plaintiff continued to be covered by defendants' medical and retirement benefits until many months after plaintiff's termination.

¶ 19 Plaintiff testified that he was provided with no notice that he was placed on the work schedule or that he was expected to return to work. Although plaintiff agreed that his union typically

contacts employees who are placed on the work schedule, he denied that his union ever contacted him. Plaintiff also denied ever being contacted by his union on either occasion after his union received the two attendance warnings issued by Leitner against plaintiff. Plaintiff testified that had he known that defendants had placed him on the work schedule, he would have followed defendants' attendance policies.

¶ 20 There was trial evidence presented that plaintiff was aware that he was placed on the work schedule. Two witnesses testified that plaintiff admitted that he knew he had been placed on the work schedule prior to his termination. The first witness was Dr. Goldstein, a psychologist with whom plaintiff had met four months after his termination on October 17, 2006, in conjunction with his workers' compensation case. Dr. Goldstein testified that plaintiff told her that he knew prior to his termination that he had been placed on the work schedule and was "expected to be back at work." Dr. Goldstein stated that plaintiff "ignored" the release to return to work after talking to his attorney. The second witness who contradicted plaintiff's testimony was Dr. Rone, a psychiatrist affiliated with Northwestern University. Dr Rone testified that during a February 9, 2011 meeting with the plaintiff, plaintiff stated he knew he had been placed on the work schedule prior to his termination.

¶ 21 Uncontroverted trial evidence was presented that showed that the plaintiff could have avoided termination by simply following the attendance policy call-in procedure. Plaintiff had other options, including invoking the collective bargaining agreement's provision between defendants and plaintiff's union that would have allowed plaintiff an additional year of leave. Plaintiff testified that he was aware of his options to avoid termination.

¶ 22 The trial evidence also disclosed that plaintiff's union filed a grievance on plaintiff's behalf

regarding his termination but that plaintiff failed to show up for the reinstatement meeting which was scheduled pursuant to the grievance between Leitner, plaintiff's union and plaintiff. Leitner assumed that because plaintiff did not show up for the reinstatement meeting, he did not intend to return to work for defendants. However, about a year and a half later, in late 2008, plaintiff's union sought plaintiff's reinstatement again. Leitner agreed to reinstate plaintiff which resolved the grievance and at the time of trial, plaintiff had been returned to defendants' employment for over three years.

¶ 23 IV. ANALYSIS

¶ 24 A. The Court's Denial of Plaintiff's Motions for Summary Judgment and Directed Verdict

¶ 25 The issue of an employer's motive or intent in dismissing a plaintiff is "a question of material fact, not normally subject to summary judgment." *Palmateer v. International Harvester Co.*, 140 Ill. App. 3d 857, 860 (1986); *Hugo v. Tomaszewski*, 155 Ill. App. 3d 906, 909 (1987). Our supreme court has held that a plaintiff does not meet the causation element in his retaliatory discharge case if the employer had a valid, nonpretextual basis for terminating the plaintiff. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 160 (1992). Plaintiff lost his case before a jury on the issue of whether defendants were motivated by plaintiff's exercise of his workers compensation rights when plaintiff was terminated. Prior to trial, plaintiff won a motion for summary judgment which was vacated following this court's ruling on a certified question in its opinion in *Grabs v. Safeway*, 395 Ill. App. 3d 286 (2009). Now, plaintiff argues that the trial court erred in vacating its grant of summary judgment in plaintiff's favor pursuant to the *Grabs* opinion. *Id.* The plaintiff also argues that the trial court erred in denying his second motion for summary judgment.

¶ 26 The trial court's denials of plaintiff's motions for summary judgment are interlocutory orders. Because a jury trial has been held in the case and the issue of whether a motion for summary judgment should have been granted generally becomes moot after trial, we need not consider whether the trial court erred in denying summary judgment to a party. *Paz v. Commonwealth Edison*, 314 Ill. App. 3d 591, 594 (2000) ("an order denying a motion for summary judgment is not reviewable after an evidentiary trial, as any error in the denial is merged in the subsequent trial.")

¶ 27 It is our observation that the trial court correctly implemented this court's *Grabs* ruling on the certified question. There was admissible evidence that defendants' motive in terminating plaintiff's employment was untainted by any exercise by plaintiff of any rights pursuant to the workers' compensation laws sufficient to preclude summary judgment on the issue. It is clear from the trial record that in order to decide whether defendants were guilty of terminating the plaintiff in retaliation for filing a workers' compensation claim, a jury needed to resolve the credibility of witnesses who presented testimony on defendants' motive. The jury was required to either accept or reject the defendants' decisionmaker on plaintiff's termination, Leitner, who provided testimony regarding the facts and circumstances surrounding how he came to place plaintiff on the work schedule and how he implemented the attendance policy. There was also evidence of plaintiff's actual knowledge that he was on the work schedule and deliberately failed to call in, of plaintiff's union's inaction when notified of plaintiff's attendance violations and of plaintiff's failure to attend the initial union grievance filed regarding plaintiff's termination.

¶ 28 All of the above were questions of fact for the jury. It was reasonable, given the facts, for the jury to conclude that plaintiff ignored being placed on the work schedule and deliberately did not

take the simple step of calling in to his supervisor, a step which, in all likelihood, would have straightened out the whole situation. The jury reasonably could have found Leitner's testimony credible and credited his explanation that he, in good faith, believed that plaintiff was cleared to work. There is little or no evidence that defendants had any motive to retaliate against plaintiff for any reason, let alone for the specific reason that plaintiff had filed a workers' compensation claim. For all these reasons, the court was correct in vacating its entry of summary judgment in favor of plaintiff and holding a full trial on the merits.

¶ 29 Plaintiff also contends that the trial court should have directed a verdict in his favor. Plaintiff's argument regarding a directed verdict requires an examination of the trial evidence which we have done, *supra*, when discussing the trial court's correct assessment that it should have vacated its summary judgment order and conducted a trial on the merits. Our analysis leads us to the conclusion that the trial court did not err in denying plaintiff's motion for a directed verdict and submitting the issue of defendants' motive in terminating the plaintiff to the jury. Reasonable minds could conclude that defendants were not motivated by plaintiff's workers' compensation claim when they terminated the plaintiff. Because there was competent evidence presented to the jury upon which it could decide that the defendants had a valid, nonpretextual reason for terminating the plaintiff, the denial of plaintiff's motion for a directed verdict was not in error.

¶ 30 B. Plaintiff's Complaints of the Trial Court's Evidentiary Rulings at Trial

¶ 31 Plaintiff raises arguments on appeal that the trial court abused its discretion when it barred plaintiff from presenting testimony from other employees of defendants that what they heard about plaintiff’s termination had a chilling effect on their desire to file a workers’ compensation claim in

the event they were ever injured.

¶ 32 The admissibility of evidence rests within the sound discretion of the trial court and its decision will not be reversed unless its decision amounts to an abuse of discretion. *Cress v. Recreation Services, Inc*., 341 Ill. App. 3d 149, 179 (2003). A trial court abuses its discretion only when no reasonable person would take the view adopted by the court. *Foley v. Fletcher*, 361 Ill. App. 3d 39, 46 (2005). Additionally, a reviewing court will not reverse a judgment based on a circuit court's evidentiary rulings unless the error " substantially prejudiced the aggrieved party and affected the outcome of the case." *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 848 (2010); *Leary v. Eng*, 214 Ill. App. 3d 279, 284 (1991) (unless substantial prejudice affecting the outcome of the trial is clearly shown, the trial court judgment should not be reversed on the basis of an evidentiary ruling).

¶ 33 We analyze the trial court's exercise of discretion in light of the disputed issues at trial. The elements of plaintiff's cause of action for retaliatory discharge are whether the plaintiff's discharge was in retaliation for filing a workers' compensation claim (*Barr v. Kelso-Burnett Co.*, 106 Ill. 2d 520, 529 (1985)) and whether defendants can articulate some legitimate, nondiscriminatory reason for the employee's discharge. *All Purpose Nursing Service v. Illinois Human Rights Comm'n*, 205 Ill. App. 3d 816, 827 (1990). If defendants demonstrate such a legitimate reason, the plaintiff has the burden of demonstrating that any legitimate reason offered by the defendant was a pretext for discrimination and was not its true reason for terminating the plaintiff. *Id.*

¶ 34 In the instant case, plaintiff alleged that defendants terminated him because he had exercised his rights under the Act. Plaintiff attempted to introduce evidence of how other employees of defendants felt about plaintiff's allegations. It is difficult to fathom how any evidence of this nature

would ever be admissible. The ultimate issue the jury was to decide was whether defendants' motive in terminating the plaintiff was because he exercised his rights under the Act, not how others may have perceived plaintiff's termination. Admitting testimony of this nature was an attempt to usurp the jury's role in deciding the issue for which this case was brought to trial. The trial court was correct in excluding this prejudicial testimony. In *Knecht v. Radiac Abrasives, Inc*., 219 Ill App. 3d 979 (1991), the court affirmed the circuit court's ruling which barred the defendant-employer from eliciting testimony from the shop steward that he"always found the personnel director to have been helpful and fair when dealing with workplace disputes." *Id*. at 984-985. The court explained that "the conduct of a person on another occasion is not relevant on the question of his conduct on the occasion at issue." *Id*. at 987. Plaintiff's attempted submissions were one or two steps removed from even the attempt in the *Knecht* case which sought to admit evidence of how the defendant-employer treated other employees. Testimony from defendants' other employees on how they felt about plaintiff's litigation is not probative on the issue of whether defendants terminated the plaintiff for exercising his rights under the Act. Defendants should not be required to defend against how others may feel about their understanding of the plaintiff's case. We hold that the trial court did not abuse its discretion in excluding such testimony as it was irrelevant and possibly prejudicial to defendant. In addition, plaintiff has failed to convince us that he was prejudiced as a result of the exclusion of this evidence. Unless plaintiff can prove substantial prejudice which affected the outcome of the trial, the jury verdict should not be reversed on the basis of any evidentiary ruling. *Leary v. Eng*, 214 Ill. App. 3d 279, 284 (1991).

¶ 35 C. Plaintiff's Complaints Regarding Jury Instructions and the Trial Court's Refusal To Read the Illinois Workers' Compensation Commission's Findings to the Jury

¶ 36 The purpose of jury instructions is to convey to the jurors the correct principles of law applicable to the evidence presented. *Martoccio v. Western Restaurants, Inc.*, 286 Ill. App. 3d 390, 392 (1997). The trial court's decision to instruct a jury on an issue is a matter within the court's sound discretion. *Id*. The court's decision with respect to jury instructions will not be overturned on appellate review absent an abuse of discretion. *Id*. In determining if a trial court abused its discretion, we look to the jury instructions, taken as a whole, to determine whether they fairly, fully and comprehensively instructed the jury of the relevant legal principles. *Thompson v. Abbott Laboratories*, 193 Ill. App. 3d 188, 200 (1990). "A reviewing court ordinarily will not reverse a trial court for giving faulty instructions unless they clearly misled the jury and resulted in prejudice to the appellant." *Schultz v. Northeast Illinois Regional Commuter R.R. Corp*., 201 Ill. 2d 260, 274 (2002).

¶ 37 We note that plaintiff has failed to provide in his brief the precise wording of any jury instructions he proposed *vs*. the wording of the jury instructions used at trial and where in the record he objected to any modification in the wording of his proposed jury instruction and how the modification prejudiced his cause at trial. At best, plaintiff's arguments surrounding the jury instructions are anything but a model of clarity. Plaintiff, for instance, argues that various proposed jury instructions relating to sections 4(h), 8(a), 12, 15 and 19 of the Act were rejected by the trial court without identifying the instructions by either number or location in the record.

¶ 38 Plaintiff identifies an instruction by number, plaintiff's proposed modified instruction 60.01, wherein plaintiff included many statutory references and significant paraphrasing of the Act. After the trial court's suggested revisions to delete the statutory references and include a statement of the

public policy contained in section 4(h) of the Act, plaintiff did not object. Instead, plaintiff submitted a revised 60.01 jury instruction to the court. This instruction was given over defendants' objection, not plaintiff's. Plaintiff's argument now is that the court-approved jury instruction used the term "retaliate" instead of "because of" which raised plaintiff's burden of proof on causation. However, this court has previously approved the use of the term "retaliate"in jury instructions that were meant to explain the elements of a retaliatory discharge cause of action. *Webber v. Wight and Co.*, 368 Ill. App. 3d 1007, 1022 (2006). Plaintiff did not object to this court-ordered modified version of jury instruction 60.01, which he tendered to the court, and also failed to demonstrate how he was prejudiced by this version. We find that the instruction 60.01, as given to the jury, adequately stated the law, especially when read together with the other jury instructions as a whole.

¶ 39 As with the above instruction, plaintiff does not clearly articulate his objection to the court's ruling on plaintiff's proposal that the jury be given IPI 15.01, a jury instruction on proximate cause that applies to tort cases involving concurrent issues raised by multiple defendants. Defendants objected to this instruction. The court gave a modified version of plaintiff's instruction to which plaintiff did not object. *Schultz v. Northeast Illinois Commuter R.R. Corp.*, 201 Ill. 2d 260, 273 (2002) ("If a pattern instruction does not accurately state the law, the court may instruct the jury pursuant to a nonpattern instruction."). It seems plaintiff is now objecting to this instruction because when the instruction referenced "proximate cause", the jury should have been simultaneously told that "proximate cause" means "a" cause. However, IPI 250.01, which is designed specifically for retaliatory discharge cases and was also given to the jury in this case, adequately stated that plaintiff's burden is to prove that his exercise of his rights under the Act was "a proximate cause" for his

termination. *Netzel v. United Parcel Service*, 181 Ill. App. 3d 808, 812 (1989); see *Holland v. Schwan Home Service, Inc.*, 2013 IL App. (5th) 110550, ¶¶ 147-149. Again, the jury instructions, read as a whole, adequately informed the jury of the law.

¶ 40 With regard to plaintiff's request to have the trial judge read the Illinois Workers' Compensation Commission's factual findings to the jury, we note that it is plaintiff's right to seek benefits under the Act and seeking those rights is protected. *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 182 (1978). It has long been the law that an employer cannot make retroactive termination decisions nor defend a retaliatory discharge case based on whether an employee's claim is ultimately found to be compensable. The public policy of the Act would be frustrated and an employee-plaintiff would be placed in a position of "choosing between their jobs and seeking remedies under the Act." *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 184 (1978). Therefore, employers are barred from using this evidence in defending a retaliatory discharge case brought by one of its employees on relevancy grounds. Even the issues of whether the plaintiff's workers' compensation claim was ultimately settled or whether the Illinois Workers' Compensation Commission found a plaintiff's claim to be compensable or not have no bearing upon a retaliatory discharge claim. *Id.* In our view, neither plaintiff nor defendant have any valid grounds for admission of this type of evidence in a retaliatory discharge case. *Id*. Plaintiff cannot have the benefit of admission of this type of evidence only when it is arguably favorable to his case, *i.e.*, where it was determined that plaintiff has a valid claim under the Act. We hold that the trial court correctly denied plaintiff's request that the judge read the Illinois Workers' Compensation Commission's factual findings to the jury as it was irrelevant to the issue of retaliatory discharge the jury was charged with deciding. Furthermore, the court was correct in

refusing plaintiff's request as it had the grave potential of being misleading and confusing to the jury and prejudicial to defendant.

¶ 41 D. The Denial of Plaintiff's Motion For Judgment Notwithstanding the Verdict

¶ 42 Plaintiff also argues that the trial court's judgment in upholding the jury's verdict in favor of defendants when it denied plaintiff's motion for judgment notwithstanding the verdict was against the manifest weight of the evidence. We disagree.

¶ 43 A trial court's decision on such a motion following a jury verdict is reviewed to determine if the judgment is against the manifest weight of the evidence. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 51 (2009). A judgment is not against the manifest weight of the evidence unless the opposite conclusion is clearly evident. *Id*. "Where there are different ways to view the evidence, or alternative inferences to be drawn from it, we accept the view of the trier of fact as long as it is reasonable." *People ex rel. Illinois Historic Preservation Agency v. Zych*. 186 Ill. 2d 267, 278 (1999). "It is irrelevant whether we may have reached a different result were we the trier of fact; it is not the function of this or any reviewing court to reweigh the evidence." *Id*. Additionally, resolving conflicts relating to the credibility of witnesses and the weight to be afforded their testimony is the province of the jury. *1350 Lake Shore Associates v. Casalino*, 352 Ill. App. 3d 1027, 1040 (2004). Accordingly, a jury's findings are entitled to great deference by both the trial court in ruling on a motion for judgment notwithstanding the verdict and by this court on review. *Southwest Bank of St. Louis v. Poulokefalos*, 401 Ill. App. 3d 884, 891 (2010).

¶ 44 The trial evidence supports the jury's findings that the plaintiff was not discharged from his employment because he had exercised his rights under the Act. The trial court's judgment in

denying the plaintiff's motion for judgment notwithstanding the jury's verdict in favor of defendants that they did not discharge the plaintiff in retaliation for exercising his rights under the Act is not against the manifest weight of the evidence. Plaintiff has not established that the jury's view and the trial court's review of the evidence was unreasonable.

¶ 45 A reasonable inference from the evidence presented supports the jury verdict that plaintiff was properly discharged for failing to follow defendants' attendance policies which was not connected to his seeking workers' compensation benefits. At best, plaintiff's arguments on appeal amount to a different way to view the admissible evidence at trial. Plaintiff has not established that the jury's view of the evidence was unreasonable or against the manifest weight of the evidence.

¶ 46 After appellate briefing was concluded, this court allowed plaintiff's motion to cite additional authority, *Holland v. Schwan Home Service, Inc.*, 2013 IL App. (5th) 110560, which he argues supports his appeal on all issues. We disagree. The case differs from the instant case in that it concerns a seven-day jury trial where the jury returned a verdict in favor of the employee, Holland, and against the employer. Holland's employer filed a motion for judgment notwithstanding the verdict which the circuit court denied. The *Holland* opinion affirmed the circuit court's denial of the employer's motion for judgment notwithstanding the verdict because it was required to consider the trial evidence and reasonable inferences in the light most favorable to the victor at trial. *Id.* at ¶ 7. The *Holland* court acknowledged that this standard is a high one, *id.*, and if reasonable minds differ concerning inferences or conclusions to be drawn from the evidence, entry of a judgment notwithstanding the verdict is not appropriate. In other words, *Holland* supports our decision to affirm in this case.

¶ 47 E. Tenor of Plaintiff's Briefs

¶ 48 Finally, this court feels constrained to address some troubling aspects of plaintiff's briefs on appeal. Repeated use of exclamation points at the end of sentences is wholly unnecessary. Exclamation points aside, we did not find plaintiff's arguments persuasive. More troubling is that plaintiff's arguments are also riddled with vituperative language leveled against the trial judge. Some examples include: "[t]he trial judge, demonstrating no knowledge of the WCA" and that "[t]he court showed an utter lack of understanding..." and "[t]he court was subsequently advised again...but persisted in its error." These are just a few examples where plaintiff's arguments on appeal were not appropriately written for inclusion in an appellate brief. *People v. Parker*, 396 Ill. 583 (1947); see generally, Illinois Law and Practice, Contempt § 17, Presenting or Filing Papers in Court (West 2010). We also disagree and find offense with many of plaintiff's inappropriate accusations leveled against the trial court, such as that "the court systematically eviscerated plaintiff's case" or that "the judge created absurdity and injustice." However, we rule today based upon the law and, absent legal justification, we will not alter the jury's verdict based upon plaintiff's estimation of what is just.

¶ 49 We do not wish by the tenor of this order to appear overly critical of advocacy. We recognize that plaintiff previously had summary judgment entered in his favor, only to have the judgment, *albeit* erroneously granted, vacated and then lose his case after presenting it to a jury. Plaintiff lays blame for the jury verdict against him wholly at the trial judge's doorstep even though the evidence fully supports the jury's verdict. Further, as disrespectful as we find the tone of plaintiff's appellate brief, plaintiff was similarly highly disrespectful in his briefs to the trial court, as well. Such pre-planned advocacy by an attorney never arouses sympathy for his client. The job of a trial judge is

difficult enough without being bombarded with written accusations that he/she is stupid or unjust. Ill. S. Ct. , Ill. Rules of Professional Conduct, R. 3.5, (eff. Jan. 1, 2010) ,Comment [4] ("Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. *** An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics."); see *Green v. Elbert*, 137 U.S. 615 (1891) (an argument which refers to a trial judge using language that is unnecessary and improper will not be allowed); see 5 Am Jur. 2d , Appellate Review, § 505 ("Courts have plenary power to strike a brief that uses *** language impugning or disparaging the appellate court [or] the trial court"). We find no evidence that the trial court was affected adversely by plaintiff's unwarranted accusations, but remained professional in the exercise of his judicial functions.

¶ 50 It is our hope that plaintiff's counsel takes this criticism to heart when filing future trial court and appellate briefs, and is mindful that this court included this admonishment in an unpublished order and sanctions were not levied.

¶ 51 IV. CONCLUSION

¶ 52 In conclusion, an employer cannot retaliate against an employee for exercising his rights under the Act. However, as our prior opinion in *Grabs* held, (395 Ill. App. 3d 286 (2009)), an employee in a retaliatory discharge case is required to prove that his/her protected status was a motivating reason or cause for any adverse employment decision. Plaintiff was given every opportunity to prove his case during an eight-day jury trial, but failed.

¶ 53 For the foregoing reasons, the denial of plaintiff's motion for directed verdict, the jury verdict and the subsequent judgment by the trial court denying plaintiff's motion for judgment notwithstanding the verdict are hereby affirmed.

¶ 54 Affirmed.