2016 IL App (1st) 152656-U

THIRD DIVISION
December 14, 2016

No. 1-15-1656

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT THOMPSON and PATRICIA THOMPSON,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 11 L 159
JUDITH RAVENCROFT, UNKNOWN OWNERS and UNKNOWN DEFENDANTS.	)	
Defendant-Appellee,	)	The Honorable John P. Kirby Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying plaintiffs' motion for judgment notwithstanding the verdict and motion for a new trial because the evidence at trial established that the jury's verdict was not against the manifest weight of the evidence. In addition, the trial court did not abuse its discretion in making its evidentiary rulings. Further, the trial court did not abuse its discretion in failing to treat defendant's admissions in her amended third-party complaint as judicial admissions. Furthermore, the trial court did not abuse its discretion in its rulings on jury instructions. We affirm.

¶ 2 This appeal arises from a jury verdict in a slip-and-fall lawsuit to defendant Judith Ravencroft. On appeal, plaintiffs Robert Thompson (hereinafter plaintiff) and Patricia Thompson

contend that the trial court abused its discretion by denying plaintiffs' motion for judgment notwithstanding the verdict and motion for a new trial because the evidence overwhelmingly established that the ice that caused plaintiff's fall was an unnatural accumulation created by defendant pumping water from her window well. In addition, plaintiffs contend that the trial court erred in several evidentiary rulings. Further, plaintiffs contend that the trial court erred when it failed to treat defendant's admissions in her amended third-party complaint as judicial admissions. Furthermore, plaintiffs contend that the trial court erred in rulings on several jury instructions. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. On January 6, 2009, plaintiff sustained injuries in a slip-and-fall on the sidewalk in front of defendant's residence at 2137 Dewed Street in Glenview, Illinois. Plaintiff filed a complaint against defendant, alleging that defendant negligently failed to follow the Village of Glenview (Village) Municipal Ordinances pertaining to the proper care of sidewalks abutting personal properties. Specifically, defendant failed to properly inspect and maintain the sidewalk abutting her property by pumping water out of her basement window well, which then froze and created a dangerous condition causing plaintiff's fall and injuries. In addition, defendant filed a third-party amended complaint for contribution against the Village. The Village then filed a motion for summary judgment which the trial court granted.

¶ 5 At trial, plaintiff testified that he was a Chicago attorney with the Environmental Protection Agency and commuted from Glenview by train. On the day of the incident, he was walking home from the train station carrying his briefcase. It was a cold night and there was a light dusting of snow on the sidewalk. He was walking along and suddenly fell back and landed on his shoulder. He heard a clicking sound and felt great pain in his ankle. Defendant and several neighbors came to plaintiff's assistance. When the paramedics arrived on the scene, one of them also slipped on the sidewalk. On cross-examination, plaintiff testified that he was

wearing Rockport shoes with rubber soles as opposed to boots. He did not recall if it was "freezing or not freezing, but [he] slipped on ice so [he] would assume it was close to freezing." After the incident he "couldn't get up and examine and move the snow and see if it was icy and inspect" the scene. He also noted that "there was no thick icy buildup anywhere. It was just a thin layer of ice." He did not see any hoses or any water running onto the sidewalk.

¶ 6 Several occurrence witnesses testified to the following. Kathleen Crawford testified that she was walking home from the train station and it was "a wintery, cold night" and "there was snow." She did not recall if she slipped or encountered any ice on her way home, but did recall there was an ice patch where plaintiff had fallen. Shannon Wilson testified that there was "a lot" of snow on the ground. She did not encounter any ice walking across the street to defendant's driveway, but slipped on ice in her backyard earlier in the day.

¶ 7 Officer Thomas Frederick testified that when he arrived on the scene it was cold and snowing, and he noticed a sump pump and two hoses leaning from the front of defendant's home toward the sidewalk. He checked to see if there was ice on the sidewalk to the east and west of defendant's home, but it was not slippery and he did not observe any ice. He did not fill out a condition report because any ice had melted. He did not recall investigating any incidents of someone falling on ice prior to this incident. On cross-examination, Officer Frederick did not recall if he tested every square inch of the sidewalk in front of defendant's home and to the east and west for ice. He also did not inspect the size of the ice patch, hoses, window-well, or ask defendant how much water she drained and where she drained it.

¶ 8 Defendant, a retired widow, testified that she had lived in her home for over 40 years and had issues with her window well filling up with water when it rained. Therefore, she would manually run water out with a sump pump attached to her garden hose. The water would then flow onto her front lawn. In 2008, she had a larger manual pump installed that would go off

when water reached a certain level, but it needed to be repaired several times and was not hooked up to the sump pump the day of the incident. A few days to a week before the incident, it was unseasonably mild so she pumped water out of the window well with the garden hose. She did not watch where the water went or know how much water was pumped out, but believed the water flowed out into the ground cover that surrounded the well. In addition, she hired a contractor, M & D Landscaping, to clear her driveway, the public sidewalk running across her driveway, and the private sidewalk going from her driveway to the front door. The Village was responsible for clearing the public sidewalk in front of her home, and thus, she did not know there was ice prior to plaintiff falling.

¶ 9 On the night of the incident, defendant was in her car about to back out of her driveway when she observed plaintiff walking along at a good pace and then fall on the public part of the sidewalk. When defendant went to assist plaintiff, she also slipped and landed next to him unharmed. Defendant then told Officer Frederick that she pumped out some water from her window well a week prior. She did not have to pay a fine to the Village as a result of plaintiff's fall.

¶ 10 Defense expert Suzanne Glowiak testified that she was a senior mechanical engineer working at CED Technologies, a company that investigated accidents. She held a master's degree in manufacturing engineering from Northwestern University and her report was peer-reviewed by a civil engineer. She investigated the case by reviewing photographs of the scene, deposition testimony, the Village codes, climatalogical data through the nearby Chicago Executive Airport and the parties' answers to interrogatories. She also inspected the scene by taking photographs and measurements. She determined that the distance from the window well to the sidewalk was 31 feet, the window well depth was 2 feet, and the garden house was 10 feet

long. Further, the climatalogical data revealed there was a significant rain event with a warming of temperatures on December 26 and December 27, followed by more rain in January with a cooling of temperatures. This lead Glowiak to conclude, along with deposition testimony from defendant and the occurrence witnesses, that defendant had pumped water out of her window well on or after the 27th. Glowiak opined that the water defendant pumped "would have come out of the house and been diffused over the area of the lawn surface and the plantings, and would have gone into the ground at that point due to the warm thawing temperatures." Thus, the ice which caused plaintiff's fall "was due to rain that had fallen two days before and then froze as a natural accumulation." On cross-examination, Glowiak noted that she did not do any soil testing, nor consider the hour-by-hour climatalogical data on the day of the incident.

¶ 11 Plaintiff's expert, Dr. Eugene Paul Holland, testified that he is a structural engineer and architect, licensed in 16 states. He reviewed the parties' interrogatories, depositions, Village ordinances, Glowiak's supplied climatalogical report, as well as the one produced by the National Oceanic and Atmospheric Administration (NOAA). He did not go and inspect the scene because the conditions were completely different than they were on the day of the incident. Based on the climatalogical report from December and January, Holland opined that defendant pumped water out two days before the incident when the ground would have been frozen, and thus, the water would have run down the lawn onto the sidewalk. Further, when the water flowed down to the sidewalk it would have been "at a much lower temperature" and "the film from the water would naturally develop as ice on the sidewalk." Consequently, Holland determined that the "the source of unnatural accumulation was [defendant's] pump."

¶ 12 As mentioned above, the jury returned a verdict in favor of defendant and against plaintiffs. Plaintiffs then filed a motion for judgment notwithstanding the verdict (JNOV) or in

the alternative a motion for a new trial. The trial court denied these motions and this timely appeal followed.

¶ 13 ANALYSIS

¶ 14 A. Judgment Notwithstanding the Verdict and Motion for a New Trial

¶ 15 On appeal, plaintiffs contend that the trial court abused its discretion by denying plaintiffs' motion for JNOV and motion for a new trial because the evidence overwhelmingly established that plaintiff's fall was caused by an unnatural accumulation of ice created by defendant pumping water from her window well. We apply a *de novo* standard of review to a trial court's denial of a motion for JNOV. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 37. "[V]erdicts ought to be directed and judgments n.o.v. entered only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand." *Bruntjen v. Bethalto Pizza, LLC*, 2014 IL App (5th) 120245, ¶ 32 quoting *Pedrick v. Peoria & Eastern Railroad Co.*, 37 Ill. 2d 494, 510 (1967). We review a trial court's ruling on a posttrial motion for a new trial on an abuse of discretion standard. *Dixon v. Union Pacific Railroad Co.*, 383 Ill. App. 3d 453, 470 (2008). In determining whether the trial court abused its discretion, "the reviewing court should consider whether the jury's verdict was supported by the evidence." *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (1992). In addition, the reviewing court must consider that "[t]he presiding judge in passing upon the motion for a new trial has the benefit of his previous observation of the appearance of the witnesses, their manner in testifying, and of the circumstances aiding in the determination of credibility." *Stamp v. Sylvan*, 391 Ill. App. 3d 117, 123 (2009). "If the trial judge, in the exercise of his discretion, finds that the verdict is against the manifest weight of the evidence, he should grant a new trial." *Snover v. McGraw*, 172 Ill. 2d 438, 456 (1996). Accordingly, a verdict is against the manifest weight of the evidence where the

opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary and not based upon any evidence." *Id.* at 454.

¶ 16 In order to recover damages based upon a defendant's alleged negligence, a plaintiff must prove that (1) the defendant owed the plaintiff a duty; (2) the defendant breached the duty; and (3) the breach was the proximate cause of the plaintiff's injuries. *Perfetti v. Marion County, Illinois*, 2013 IL App (5th) 110489, ¶ 16. In Illinois, a landowner is not responsible for injuries resulting from a natural accumulation of snow or ice that has been left undisturbed. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 227 (2010). A defendant cannot be held liable for injuries sustained under these circumstances unless a plaintiff shows that the defendant aggravated a natural condition or that the origin of the accumulation of ice, snow, or water was unnatural. *Hornacek v. 5th Avenue Property Management*, 2011 IL App (1st) 103502, ¶ 26.

¶ 17 Contrary to plaintiffs' suggestion, all of the evidence at trial did not undeniably establish that plaintiff's fall was caused by an unnatural accumulation of ice. Although plaintiffs' expert Holland opined that defendant caused the ice to form by pumping water from her window well, other evidence at trial suggested otherwise. For instance, defense expert Glowiak concluded that the water defendant pumped almost a week before the incident was diffused into the ground. But the rain that had fallen two days prior froze as ice on the sidewalk. Further, every post-occurrence witness testified that it was a cold and snowy night. Both plaintiff and Officer Frederick suggested there was a thin layer of ice on the sidewalk, not an icy buildup. In addition, although Officer Frederick did not encounter any other patches of ice, he did not recall if he tested every square inch of the sidewalk in front of defendant's home and in the surrounding area. Furthermore, Wilson testified that there was "a lot" of snow and she slipped in her backyard on ice the day of the incident. Therefore, viewed in the light most favorable to defendant as we

must, the trial court did not err in denying plaintiff's request for a JNOV. See *Vanderhoof v. Berk*, 2015 IL App (1st) 132927 ¶ 59 (a motion for judgment n.o.v "may be granted only when all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand").

¶ 18 Moreover, based on the above evidence presented at trial, we cannot say the trial court abused its discretion in denying plaintiffs' motion for a new trial. The jury's verdict was not unreasonable and against the manifest weight of the evidence. It is the jury's role to "resolve evidentiary conflicts, determine the credibility of witnesses, and decide the weight to give each witness' testimony," and as the reviewing court, we "will not reweigh the evidence merely because another conclusion is possible." *Lisowski v. MacNeal Memorial Hospital Association*, 381 Ill. App. 3d 275, 282-83 (2008).

¶ 19 B. Evidentiary Rulings

¶ 20 Plaintiffs contend that the trial court erred in several evidentiary rulings, some or all of which should result in remand for a new trial. Specifically, plaintiff claims the trial court erred in denying plaintiffs' motion *in limine* to bar the testimony of defense expert Glowiak because she was unqualified and her opinion was based on speculation and conjecture. An individual will be permitted to testify as an expert if her experience and qualifications afford her knowledge which is not common to lay persons and where her testimony will aid the jury in reaching its conclusion. *Modelski v. Navistar International Transportation Corp.*, 302 Ill. App. 3d 879, 886 (1999). "There is no predetermined formula for how an expert acquires specialized knowledge or experience and the expert can gain such through practical experience, scientific study, education, training or research." *Thompson v. Gordon*, 221 Ill. 2d 414, 429 (2006). Therefore,

"formal academic training or specific degrees are not required to qualify a person as an expert; practical experience in a field may serve just as well to qualify him." *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 459 (1992). Expert opinions relying on speculation, conjecture, or guess as to what the witness believed might have happened are inadmissible. *Hudson v. City of Chicago*, 378 Ill. App. 3d 373, 401 (2007). The decision of whether to admit or exclude evidence, including whether to allow an expert to present certain opinions, rests solely within the discretion of the trial court and will not be disturbed absent an abuse of discretion. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 36-37 (2010).

¶ 21 Here, although Glowiak did not have an Illinois engineering license, this alone did not preclude the trial court from allowing her to testify. The record demonstrates that Glowiak had over 20 years experience investigating hundreds of slip-and-fall cases. She was also a member of several professional societies, served on technical committees, obtained two awards, gave conference presentations, and wrote professional papers. Namely, she published several papers on the stochastic theory of human slipping and gave numerous presentations on natural versus unnatural accumulation of ice. Bluntly put, she had more experience than an average layperson in opining on slip-and-fall cases as well as natural and unnatural accumulation. *See Davis v. Kraff*, 405 Ill. App. 3d 20, 38 (2010) ("expert testimony is admissible if the proffered expert is qualified by knowledge, skill, experience, training, or education, and the testimony will assist the trier of fact in understanding the evidence"); *Thompson*, 221 Ill. 2d at 429 (our supreme court noted that an engineering license was not required as a prerequisite to testifying).

¶ 22 In addition, Glowiak's opinions were not speculative. She relied on photographs of the scene, deposition testimony and climatalogical data in investigating the case. She also visited the scene to take measurements, and although she did not analyze the soil and water absorption, we

agree that it was moot as the conditions were different on the day of the incident. Further, plaintiffs' counsel extensively cross-examined Glowiak and provided its own expert Holland to counter Glowiak's conclusions. Therefore, the jury was given the opportunity to decide which theory they found most compelling and plaintiffs were not prejudiced. See *York v. Rush-Presbyterian-St. Luke's Medical*, 222 Ill. 2d 147, 179 (2006) ("credibility determinations and the resolution of inconsistencies and conflicts in testimony are for the jury"); *Lange v. Freund*, 367 Ill. App. 3d 641, 651 (2006) ("a jury's province as factfinder is not impermissibly invaded even by expert testimony expressed in absolute terms, since jurors remain free to disbelieve and disregard such testimony").

¶ 23 Relying on *Altszyler v. Horizon House Condominium Association*, 175 Ill. App. 3d 93 (1998), plaintiffs also contend the trial court abused its discretion by failing to allow Officer Frederick to testify regarding the causation of plaintiff's fall. "If a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." *Id.* at 100. We find plaintiffs' reliance misplaced. In *Altszyler*, a bicyclist, injured in a fall on a public sidewalk, brought a personal injury action against the property owner. The reviewing court determined that the lay witness's opinion testimony was appropriate where he was employed as the head janitor at defendant's condominium building and observed the sidewalk at issue deteriorate from wear and water over a 10-year period. *Id.* at 96-97, 100. The witness had enough knowledge to establish that his opinion was "rationally based on his own perception and was helpful to a clear understanding of his testimony and the determination of a fact in issue." *Id.* at 100. In the present case, however, the trial court gave counsel the opportunity to try and

lay an appropriate foundation for the testimony, but the witness's testimony was not helpful in this regard. The officer did not recall investigating any incidents of someone falling on ice prior to plaintiff. He also did not observe any water coming out of either of the two hoses. Hence, his opinion would not have been based on any rational perception or his personal/professional experience. The record reveals that any opinion by this witness would have been based upon mere guess and conjecture. See *Atchley v. University of Chicago Medical Center,* 2016 IL App (1st) 152481, ¶ 39.

¶ 24 Plaintiffs further contend the trial court erred in its ruling on the admissibility of several exhibits. Initially, plaintiffs argue the trial court erred in allowing defendant's Exhibit 3, consisting of 37 scene photographs, because the photographs were taken 5 years post-incident and did not fairly portray the condition of the property on the date of the occurrence. We find no error in the record, since defense counsel made it clear to the jury when he examined his expert that the photographs were taken at a later date and the foliage would have been different due to the change of season, a common occurrence a juror would be able to apprehend. The purpose was to show the measurements of the window well to the sidewalk. In addition, since the trial court allowed photographs the police took immediately after the incident into evidence, the jury had an accurate depiction of the scene and plaintiffs were not prejudiced. See *Boersma v. Amoco Oil Co.*, 276 Ill. App. 3d 638, 648 (1995) (the admission of evidence rests largely within the sound discretion of the trial court and its decision will not be reversed unless that discretion has been clearly abused).

¶ 25 Plaintiffs also argue that the trial court erred by denying their request to publish to the jury the climatalogical data they entered into evidence as Exhibits 13, 14, 15 and 16. We note that plaintiffs fail to cite to where in the record they made this request and the trial court denied

it, and thus, we need not consider this matter. See Ill. Sup. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (argument portion of brief must cite to the pages of the record relied on); *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297-98 (2010) (failure to comply with Rule 341(h)(7) results in the forfeiture of the argument). Additionally, we observe that even if the trial court should have allowed the exhibits to be published, the record demonstrates no prejudice to plaintiffs. The jury heard extensive testimony regarding the climatalogical data at issue from plaintiffs' own expert and the corresponding exhibits were admitted into evidence at trial. Consequently, the evidence at issue was readily available for the jury to consider during deliberations. See *In re Marriage of Willis*, 234 Ill. App. 3d 156, 161 (1992) (the reviewing court determined that, under the circumstances, even if the trial court erred in admitting the evidence, it does not require reversal since no prejudice resulted).

¶ 26 C. Third-Party Complaint

¶ 27 Plaintiffs contend the trial court abused its discretion when it failed to treat defendant's admissions in her amended third-party complaint as judicial admissions. Judicial admissions are defined as "deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *In re Estate of Rennick*, 181 Ill.2d 395, 406 (1998). If a fact is judicially admitted, it serves as an admission and the adverse party has no need to submit any evidence on that point at trial. *North Shore Community Bank and Trust Co. v. Sheffield Wellington LLC*, 2014 IL App (1st) 123784, ¶ 102. A statement made as part of an alternative fact pleading, such as a third-party complaint, cannot be used as an admission against the pleader. *Bargman v. Economics Laboratory, Inc.*, 181 Ill. App. 3d 1023, 1032-33 (1989).

¶ 28 In the case *sub judice*, defendant filed a third-party complaint against the Village seeking contribution for any liability imposed for plaintiff's injuries. The trial court concluded that since

the admission was made against a third-party defendant it was "not clear and concise" enough to rise to the level of a judicial admission. We agree. In defendant's third-party complaint she alleged that the Village "failed to manage, maintain, and repair its property including . . . the public sidewalk at or near [defendant's property] for settling and improper drainage resulting in natural accumulations of water and ice." Further, defendant alleged that the Village "allowed an unnatural accumulation of ice to form thereby causing an unreasonably dangerous condition for others as well as plaintiff." Defendant, however, does not allege anything about plaintiff's fall, that she is referring to the exact patch of ice plaintiff fell on, or that she produced any of the ice or water on the sidewalk. Moreover, this alleged admission was clearly contingent upon the outcome of the action between plaintiff and the Village which does not qualify as a judicial admission here. See *Cleveringa v. J.I. Case Co.*, 230 Ill. App. 3d 831, 846 (1992) citing *Tuttle v. Fruehauf Division of Fruehauf Corp.*, 122 Ill. App. 3d 835, 841 (1984) (allegations made in an unverified pleading in a third-party action may not be used as admissions where the allegations were pleaded in the alternative or the claims asserted were contingent). In addition, we need not consider plaintiffs' contention that the trial court erred by failing to allow defendant's response to the Village's motion for summary judgment into evidence. Plaintiffs fail to provide us with a cohesive legal argument, cite to relevant legal authority, and continuously fail to cite to the record in violation of Illinois Supreme Court Rule 341(h)(7). See Ill. Sup. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (argument portion of brief shall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on, and points not argued are waived).

¶ 29 D. Jury Instructions

¶ 30 Plaintiffs' final contentions concern rulings on numerous jury instructions. The purpose of jury instructions is to provide the jury with correct legal rules that can be applied to the evidence to guide the jury toward a proper verdict. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 507 (2002). To be proper, a jury instruction "must state the law fairly and distinctly and must not mislead the jury or prejudice a party." *Id.* Issuing jury instructions is within the court's discretion. *Studt v. Sherman Health Systems*, 2011 IL 108182, ¶ 13.

¶ 31 Plaintiffs contend that the trial court erred in failing to give Illinois Pattern Jury Instruction, Civil (I.P.I. Civil) 2.03, which advises the jury that a dismissed party is no longer a party, and therefore, the jury should not speculate about its dismissal. Here, the trial court properly denied this instruction as the jury had never been informed that the Village was a third-party defendant. Therefore, there was no evidence presented at trial to support this instruction which would have potentially confused the jury. See *Heastie v. Roberts*, 226 Ill. 2d 515, 543 (2007) (to give a jury instruction, there must be some evidence to support the instruction).

¶ 32 Plaintiffs also contend that the trial court erred in giving several jury instructions regarding contributory negligence, which were a form of I.P.I. Civil 125.02, combined with I.P.I. Civil 128.04, as well as Verdict Form B. Contrary to plaintiffs' suggestion, testimony at trial supported defendant's affirmative defense of contributory negligence. For instance, several occurrence witnesses testified that it was a cold, snowy evening. Plaintiff testified that he was not wearing snow boots and defendant's testimony suggested that plaintiff may have failed to pay close attention to his surroundings. Hence, we see no error. See *Kramer v. Milner, M.D.*, 265 Ill. App. 3d 875, 879 (1994) (a trial court's decision to give or not give jury instructions will only be disturbed if it is demonstrated that the trial court clearly abused its discretion).

¶ 33 Plaintiffs further contend the trial court erred in giving I.P.I. Civil 125.04, defining natural and unnatural accumulation, and I.P.I. 125.01, stating that a landowner has no duty to remove the snow and ice resulting from a natural accumulation. Although plaintiffs argue there was no question that the accumulation was unnatural, we find this is a disingenuous argument, since it is not debatable that the entire trial hinged on whether it was a natural accumulation or unnatural accumulation caused by defendant. Both parties had expert testimony to support their legal theory, and again, any alleged admissions defendant made in her third-party complaint were inadmissible at trial. As a result, we can find no prejudice here. See *Naleway v. Agnich*, 386 Ill. App. 3d 635, 641 (2008) (a reviewing court will only reverse the trial court for giving faulty jury instructions where the instructions "clearly misled the jury and resulted in prejudice to the appellant").

¶ 34 Furthermore, we fail to see how plaintiffs were prejudiced by the trial court giving I.P.I. Civil 36.01, stating that if the jury decides for the defendant on liability it would have no reason to consider damages. We recognize that this instruction has been criticized as duplicative (see *Misch v. Meadows Mennonite Homes*, 114 Ill. App. 3d 792, (1983)), but plaintiffs fail to cite any authority which holds that the giving of such instruction is erroneous. See Ill. S.Ct. Rule 341(h)(7) (eff. Feb. 6, 2013); *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7 (the purpose of our supreme court's rules is to require the presentation of clear and orderly arguments so that we may ascertain and dispose of the issues at hand, as this court is not a depository into which litigants may dump the burden of research).

¶ 35 Finally, we observe that plaintiffs have forfeited their remaining contentions on appeal. Plaintiffs' contention that the trial court erred in failing to give I.P.I. Civil 21.02, regarding the burden of proof without contributory negligence was not preserved per our review. This request

was made during the initial jury instruction conference and the trial court reserved ruling on the issue. In the subsequent conference, however, plaintiffs withdrew their request for this instruction, and in doing so, forfeited their right to challenge the instruction. See *Severino v. Freedom Woods, Inc.*, 407 Ill. App. 3d 238, 249 (2010) (errors not raised in the trial court are forfeited on appeal). Further, although plaintiffs contend the trial court erred by failing to give I.P.I. Civil 60.01, which addressed defendant's violation of two Village ordinances, the ordinances at issue were not included in the appellate record and we need not consider them here. See Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016); *Mead v. Board of Review of McHenry County*, 143 Ill. App. 3d 1088, 1092 (1986) (appellant's failure to substantially comply with procedural rules is grounds for dismissal). Moreover, although plaintiffs contend that the trial court erred in giving I.P.I. Civil 125.02, combined with I.P.I. Civil 128.04, regarding the burden of proof, plaintiffs fail to cite to the record in support of their argument. See Ill. S.Ct. Rule 341(h)(7) (eff. Jan. 1, 2016); *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 40 (2009) (supreme court rules require "citation to the pages of the record"). Accordingly, we cannot say the trial court abused its discretion.

¶ 36 CONCLUSION

¶ 37 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 38 Affirmed.