2016 IL App (1st) 153148-U

SIXTH DIVISION
June 10, 2016

No. 1-15-3148

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BRADLEY LYNK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 L 1552
	)	
FITNESS 19 IL 213, LLC,	)	Honorable
	)	William E. Gomolinski,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirmed the grant of summary judgment in favor of defendant, finding that plaintiff's negligence claim fell within the scope of an exculpatory clause and that plaintiff's wilful and wanton claim failed because plaintiff did not establish proximate cause.

¶ 2 Plaintiff-appellant, Bradley Lynk, filed suit against defendant-appellee, Fitness 19 IL 213, LLC, (Fitness), the owner and operator of several gyms. Plaintiff claimed Victor Martinez, a personal trainer and agent of Fitness, acted negligently and wilfully and wantonly while directing plaintiff during exercise sessions and, as a result, plaintiff suffered from rhabdomyolysis. The circuit court granted Fitness summary judgment as to the negligence count

as the claim fell within the scope of an exculpatory clause and on the wilful and wanton count based on Fitness's arguments that its conduct was not wilful and wanton as a matter of law and, in the alternative, plaintiff failed to present a sufficient factual basis to sustain the elements of the claim, including proximate cause. We affirm.

¶ 3 On February 13, 2013, plaintiff filed his two-count complaint against Fitness, alleging that, on August 15 and 17, 2011, he was a business invitee at a gym owned by Fitness and that on those dates, Mr. Martinez, who was employed by Fitness as a personal trainer, instructed plaintiff as to his workout activities. Plaintiff claimed to have suffered rhabdomyolysis[1] due to the intensity of the exercises. In count I, plaintiff asserted that Fitness owed him a duty of care and breached that duty, through its agent, by directing and encouraging plaintiff to exercise in a dangerous manner and failing to develop a safe workout plan. In count II, plaintiff claimed that these same acts were done in a wilful and wanton manner.

¶ 4 Defendant filed an answer and affirmative defenses. The affirmative defenses included an assertion that plaintiff had waived his claims for damages by executing a personal training agreement (agreement) prior to performing the exercises. That agreement has a provision which states:

> "WAIVER AND RELEASE OF LIABILITY. [Defendant] *** urges you *** to obtain a physical examination from a doctor before using any exercise equipment or participating in any exercise classes. All exercises, including the use of weights and *** machinery *** designed for exercising shall be at the member's sole risk. Member understands that the *** selection of exercise programs, methods and types of equipment

[1] Rhabdomyolysis is defined as "the destruction or degeneration of muscle tissue (as from traumatic injury, excessive exertion, or stroke) accompanied by the release of breakdown products into the bloodstream and sometimes leading to acute renal failure." See http://www.merriam-webster.com/dictionary/rhabdomyolysis.

> shall be member's entire responsibility, and [defendant] shall not be held liable to member for any *** injuries, damages or actions arising due to injury *** arising out of *** use *** of the services, facilities and premises of [defendant] *** Member *** holds [defendant] or any *** employees harmless from any and all claims *** for any such injuries or claims."

¶ 5 During the discovery process, the parties deposed plaintiff, Mr. Martinez, and Jacob Ross, plaintiff's retained expert.

¶ 6 At his deposition, plaintiff testified that he was 31 years old, had played high school soccer, and has been involved in recreational sports throughout his life. Although he had completed a one year program in order to receive a paramedic license, he had never worked as a paramedic. Plaintiff, prior to this incident, was not aware that exertion could cause rhabdomyolysis and had not suffered from the condition. Additionally, when asked whether he learned during his paramedic studies, that rhabdomyolysis could be caused by exertion, he answered: "I cannot diagnose that."

¶ 7 In August 2011, because he did not work out and had little knowledge about the best way to do so, plaintiff made the decision to utilize the services and expertise of Mr. Martinez. Plaintiff admitted that the agreement which he had signed prior to the workouts informed him that his use of Fitness's services and weights, and his exercises at the gym, were at his "sole risk."

¶ 8 Plaintiff had two 30 minute sessions with Mr. Martinez. At the first workout on August 15, plaintiff performed sets of exercises which focused on his arm muscles using free weights and various machines. Mr. Martinez specified the number of repetitions and sets for each of the

exercises. Plaintiff did not recall what those numbers were and did not know the amount of the weight or resistance. In between sets, plaintiff did as many push-ups as he could.

¶ 9 Plaintiff felt no pain during the August 15 session, nor that night. On August 16 and 17, however, his arms from his shoulders to his wrists felt "really sore," and he had limited arm movement on both sides. Nonetheless, on August 17, plaintiff exercised again with Mr. Martinez.

¶ 10 At the start of the second session, Mr. Martinez asked plaintiff how he was feeling. Plaintiff told Mr. Martinez about the soreness in his arms and that he did not have full range of motion. In response, Mr. Martinez laughed, as soreness was to be expected, and told plaintiff to take Tylenol and drink water.

¶ 11 During the second session, plaintiff performed five to seven exercises at different "stations" for his back which required the use of his arms. Plaintiff indicated to Mr. Martinez, several times, that he had pain and limited range of motion and could not do the exercises. Mr. Martinez encouraged him to continue. Plaintiff did not recall the extent of the restriction of his range of motion. At his deposition, plaintiff stated that prior to the second workout he had trouble using a keyboard and a phone, but he never gave this specific information to Mr. Martinez.

¶ 12 Plaintiff's soreness, particularly with movement of his arms, increased after the second session. On the night of August 17, plaintiff passed dark urine. On the morning of August 18, he sought emergency room treatment after having had his urine and blood tested. Plaintiff was diagnosed with rhabdomyolysis and was hospitalized for several days. He was told by his medical providers that the rhabdomyolysis was caused by "excessive muscle stress" from a "weight lifting type strain." Plaintiff has fully recovered.

¶ 13 Mr. Martinez, at his deposition, testified that he supervised plaintiff's exercises on August 15 and 17, 2011, as part of his employment as a personal trainer with Fitness. He understood that plaintiff's goal was to build his muscles and lose weight. Prior to this incident, Mr. Martinez had never heard of rhabdomyolysis.

¶ 14 During the workout sessions, Mr. Martinez guided plaintiff's exercises through instructions and demonstrations as to proper form and use of the machines. During a workout, Mr. Martinez always specifies the number of repetitions to be done, usually 8 to 10. As Fitness had trained him, Mr. Martinez generally starts a new client such as plaintiff with lighter and easier routines. He would not have told plaintiff to perform the maximum number of repetitions and would have only provided plaintiff with light resistance beginning with 5 to 10 pounds. If plaintiff had said that he could not complete an exercise, Mr. Martinez would not have told him to keep going. Plaintiff made no complaints about the workouts.

¶ 15 At his deposition Mr. Ross, a personal trainer, testified that he was employed by EFT Sports Performance (EFT) which provides training in general adult fitness and sports performance. He received a Bachelor of Science degree in movement science and health and science from Texas Christian University and has completed two years of course work toward a master's degree.

¶ 16 Mr. Ross defined a personal trainer as "an individual [who] is an expert within the fitness industry that is qualified to lead someone through exercise in order for them to accomplish a goal and that entails the ability to prescribe a certain regimen to reach that goal." Mr. Ross did not know the minimum level of training or education which would be necessary for a physical trainer to reach this standard. Many organizations offer "certifications" for personal trainers, but the requirements vary greatly in terms of training and testing requirements. Mr. Ross believed

that his work experience, training, knowledge, and undergraduate and graduate studies were far more extensive than any certification program.

¶ 17 According to Mr. Ross, no state has licensing requirements for personal trainers and the industry has no recognized standards. Individual fitness centers will have varying educational and training requirements for their personal trainers. Mr. Ross had no knowledge of what minimum requirements there should be for a personal trainer working at a fitness center.

¶ 18 Mr. Ross reached certain opinions after reviewing the depositions of plaintiff and Mr. Martinez and the complaint. These opinions were: that the workouts with Mr. Martinez caused plaintiff's rhabdomyolysis which he defined as "a condition where you have muscular tissue breakdown to the point in which contents of the muscle leak out; specifically proteins, into the blood"; in light of plaintiff's complaints of soreness and limited range of motion, he would not have allowed plaintiff to proceed with the second workout in order to avoid the possibility of muscle rupture or rhabdomyolysis; and that no personal trainer would have proceeded with the second session. Mr. Ross believed that it would have been possible to design a workout program for plaintiff that would not have caused the rhabdomyolysis.

¶ 19 Mr. Ross was not aware of all of the factors which may cause rhabdomyolysis and does not know if there are individuals who may be more susceptible to the development of this condition. He has never researched rhabdomyolysis, is not a physician, and has had no medical training. Mr. Ross has not had any experience with rhabdomyolysis.

¶ 20 Mr. Ross also believed that, because Mr. Martinez was unaware of rhabdomyolysis, he was not competent and should not have been training and was reckless for doing so. He based this opinion on the fact that rhabdomyolysis is known "among professionals within the industry." He defined "professional" as those with a "good education," who understand anatomy,

physiology, and the health risks associated with weight training and cardio training. However, he also thought "it's fairly common and expected for a trainer" to know about rhabdomyolysis.

¶ 21 On March 7, 2014, Fitness filed a motion seeking the entry of summary judgment on both counts of the complaint based upon the exculpatory clause of the agreement. The circuit court granted this motion on July 25, 2014. After plaintiff filed a motion to reconsider, the circuit court vacated that part of the order granting summary judgment as to count II only.

¶ 22 Fitness filed a second motion seeking summary judgment on count II and submitted the depositions of plaintiff and Mr. Martinez. Fitness argued that the evidentiary facts demonstrated that, as a matter of law, Fitness had not engaged in wilful and wanton conduct or, in the alternative, that plaintiff failed to present sufficient evidentiary facts to establish that Fitness acted in a wilful and wanton manner and that its conduct was the proximate cause of plaintiff's injury.

¶ 23 In opposition to this motion, plaintiff submitted the affidavit of Mr. Ross. In his affidavit, Mr. Ross stated that it was well known among fitness and sports performance professionals that intense exercise may cause rhabdomyolysis. In his opinion, "to a reasonable degree of professional fitness and sports performance certainty," Mr. Martinez: directed plaintiff to engage in a workout which was appropriate only for "elite athletes and highly trained individuals" who had been involved in resistance training for at least one year; should have immediately directed plaintiff to cease the workout when he complained of pain and, therefore, acted in reckless disregard of plaintiff's health; was not competent nor qualified to be a personal trainer because he lacked knowledge of rhabdomyolysis; and the workouts led to plaintiff's condition.

¶ 24 In its reply, Fitness moved to strike the opinions and conclusions of Mr. Ross set forth in both his affidavit and deposition because he: was not competent to provide such testimony; did not know the standard of care applicable to individual personal trainers employed by fitness centers; and was not competent to provide medical testimony as to causation, including an opinion that plaintiff would not have suffered rhabdomyolysis if he had performed a different workout.

¶ 25 On May 11, 2015, plaintiff moved to reconsider the entry of summary judgment as to count I. Plaintiff, relying on Mr. Ross's affidavit, asserted that rhabdomyolysis was not foreseeable and therefore the exculpatory clause did not apply. In response, Fitness argued that Mr. Ross's affidavit was not "newly discovered evidence" and, therefore, could not serve as a basis to reconsider the circuit court's ruling on the motion for summary judgment on count I. In the alternative, Fitness argued that the opinions contained in Mr. Ross's affidavit should be stricken because he was not competent to testify to same.

¶ 26 On November 4, 2015, the circuit court denied plaintiff's motion to reconsider the July 24, 2014, order entering judgment in favor of Fitness on count I and granted Fitness's motion for summary judgment on count II. The circuit court's order did not address Fitness's requests to strike the opinions of Mr. Ross in his affidavit and deposition, or state whether it had considered the opinions of Mr. Ross in deciding the motions. Plaintiff now appeals.

¶ 27 On appeal, plaintiff argues that genuine issues of material fact exist as to whether his negligence claim falls within the scope of the exculpatory clause of the agreement and whether the conduct of Fitness through its agent Mr. Martinez was wilful and wanton and the proximate cause of his injury.

¶ 28 Summary judgment is proper when the pleadings, depositions and affidavits demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). "The purpose of summary judgment is not to answer a question of fact, but to determine whether one exists." *Ballog v. City of Chicago*, 2012 IL App (1st) 112429, ¶ 18. In determining whether a question of material fact exists, the reviewing court must construe the materials of record strictly against the movant and liberally in favor of the nonmoving party. *Id*. Summary judgment should not be granted unless the movant's right to judgment is free and clear from doubt. *Id*. We review the grant of summary judgment *de novo*. *Id*.

¶ 29 Before addressing the issues raised by plaintiff on appeal, we note Fitness's arguments attacking the adequacy of the affidavit and deposition of Mr. Ross. The circuit court, in ruling on Fitness's motion for summary judgment on count II and plaintiff's motion for reconsideration of the entry of summary judgment on count I, did not rule on Fitness's requests to strike the opinions and conclusions of Mr. Ross as set forth in his affidavit and deposition.

¶ 30 " 'When a party moves to strike an affidavit filed in summary judgment proceedings, it is that party's duty to bring his motion to the attention of the trial court and to get a ruling on the motion. Failure to obtain such a ruling will operate as a waiver of the objections to the affidavit. [Citation.]' " *Independent Trust Corp. v. Hurwick*, 351 Ill. App. 3d 941, 949-50 (2004) (quoting *Woolums v. Huss*, 323 Ill. App. 3d 628, 633 (2001)); *Intercontinental Parts, Inc. v. Caterpillar, Inc*., 260 Ill. App. 3d 1085, 1090 (1994). However, in conducting a *de novo* review of a summary judgment decision we " 'must independently examine the evidence presented in support of and in opposition to a motion for summary judgment ***.' " *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 5 (quoting *Groce v. South Chicago Community Hospital*, 282 Ill. App. 3d

1004, 1006 (1996)). Therefore, our *de novo* review of the entry of summary judgment may include a *de novo* review of the sufficiency of the evidentiary matter, even in the absence of the circuit court's failure to rule on any motion to strike. See *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 648 (2002).

¶ 31 Affidavits which are submitted in support or opposition of summary judgment must comply with the provisions of Supreme Court Rule 191(a). Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013); *Essig v. Advocate BroMenn Medical Center*, 2015 Il App (4th) 140546, ¶ 45. Rule 191(a) requires that the affidavits be made on the personal knowledge of the affiant, set forth the particular facts upon which the claim or defense is based, and attach sworn or certified copies of the papers upon which the affiant relied. Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013). Additionally, the affidavit, "shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." *Id.* "A deposition may be used to oppose a summary judgment if it 'meet[s] the affidavit requirements of Rule 191(a) ***, including the requirement that it be made on the personal knowledge of the deponent and that it not consist of conclusions but of facts admissible in evidence.' " (Citation omitted.) *Argueta*, 2011 IL App (1st) 102166, ¶ 8 (quoting *Financial Freedom v. Kirgis*, 377 Ill. App. 3d 107, 135-36 (2007)). Where applicable, in our *de novo* review of the circuit court's orders granting Fitness summary judgment on both counts and denying plaintiff's motion for reconsideration as to count I, we will consider the relevant portions of the affidavit and deposition testimony of Mr. Ross under the standards set forth in Rule 191(a).

¶ 32 An exculpatory clause constitutes an express allocation by the parties as to the risks of negligence. *Platt v. Gateway International Motorsports Corp.*, 351 Ill. App. 3d 326, 330 (2004);

Johnson v. Salvation Army, 2011 IL App (1st) 103323, ¶ 19. Courts will generally enforce an exculpatory clause unless the clause is against public policy, the bargaining positions of the parties were substantially disparate or the nature of the parties' relationship militates against such enforcement. *Hawkins v. Capital Fitness, Inc.*, 2015 IL App (1st) 133716, ¶ 18. Plaintiff has not challenged the exculpatory clause on these grounds and has, therefore, forfeited these issues. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) ("[p]oints not argued are waived").

¶ 33 A court construes a contractual provision which releases liability strictly against the defendant. *Hawkins*, 2015 IL App (1st) 133716, ¶ 19 (citing *Cox v. U.S. Fitness, LLC*, 2013 IL App (1st) 122442, ¶ 14). Although an exculpatory clause may be broadly written (*Hussein v. L.A. Fitness International, L.L.C.*, 2013 IL App (1st) 121426, ¶ 13), it " 'should contain clear, explicit, and unequivocal language referencing the types of activities, circumstances, or situations that it encompasses and for which the plaintiff agrees to relieve the defendant from a duty of care.' " *Hawkins*, 2015 IL App (1st) 133716, ¶ 19 (quoting *Garrison v. Combined Fitness Centre, Ltd.*, 201 Ill. App. 3d 581, 585 (1990)). " 'The precise occurrence that results in injury *** need not have been contemplated by the parties at the time of contracting.' " *Cox*, 2013 IL App (1st) 122442, ¶ 14 (quoting *Jewelers Mutual Insurance Co. v. Firstar Bank Illinois*, 341 Ill. App. 3d 14, 19 (2003)). " 'The injury must only fall within the scope of possible dangers ordinarily accompanying the activity and, therefore, reasonably contemplated by the parties.'"(Internal quotation marks omitted.) *Id.* (quoting *Hamer v. City Segway Tours of Chicago, LLC*, 402 Ill. App. 3d 42, 45 (2010)).

¶ 34 " 'The relevant inquiry *** is not whether plaintiff foresaw defendants' exact act of negligence, but whether plaintiff knew or should have known the accident was a risk encompassed by his [or her] release.' " (Internal quotation marks omitted.) *Hawkins*, 2015 Il App

(1st) 133716, ¶ 20 (quoting *Cox*, 2013 IL App (1st) 122442, ¶ 14). The question as to foreseeability or whether a claim falls within the scope of an exculpatory clause, is generally one of fact (*Offord v. Fitness International LLC*, 2015 IL App (1st) 150879, ¶ 23), but may be decided as a matter of law on summary judgment. See *Cox*, 2013 IL App (1st) 122442, ¶ 17.

¶ 35 Plaintiff, in count I of his complaint, alleges that he was injured—suffered from rhabdomyolysis—as a result of Fitness's negligent conduct, specifically that Mr. Martinez, Fitness's employee, directed him to perform a workout which was dangerously intense and failed to design a safe workout plan. In his deposition plaintiff testified that he suffered soreness and had limited range of motion of his arms after the workout sessions which included the use of Fitness's equipment and weights. Plaintiff also testified that on August 18, the day after his second workout session, he was in the hospital having been diagnosed with rhabdomyolysis and that he was told by his physicians that his rhabdomyolysis was caused by over exertion of his muscles by lifting weights.

¶ 36 The agreement's exculpatory clause states that "all exercises, including the use of weights and *** machinery *** designed for exercising shall be at the member's sole risk." The clause also provides that "the *** selection of exercise programs, methods and types of equipment shall be member's entire responsibility, and Fitness 19 *** shall not be held liable to member for any *** injuries, damages or actions arising due to injury *** arising out of *** use *** of the services, facilities and premises of Fitness 19." It was further agreed that the "[m]ember *** holds Fitness 19 *** or any *** employees harmless from any and all claims *** for any such injuries or claims."

¶ 37 By the plain terms of the exculpatory clause, plaintiff agreed to release Fitness from liability as to any and all claims for any injury which resulted from his use of Fitness's exercise

facilities, his use of Fitness's weights and machines to exercise and the selection of exercise programs, methods, and machines. In his deposition, plaintiff conceded that, pursuant to the agreement, his use of Fitness's services and weights and his exercise at the gym were at his "sole risk." His claim was that, due to muscle exertion during his exercise sessions, he suffered rhabdomyolysis. It was reasonably forseeable that plaintiff would be physically injured as a result of his exercise sessions with Mr. Martinez and any such injuries were within the expressed scope of the exculpatory clause. Therefore, the circuit court properly granted summary judgment on count I.

¶ 38 Plaintiff, citing *Cox*, argues that that the exculpatory clause "did not explicitly identify personal training services as a risk that plaintiff assumed." We disagree.

¶ 39 The plaintiff in *Cox* was injured while performing an exercise under the direction of a personal trainer at the defendant's facility. The plaintiff signed an agreement with an exculpatory clause which stated that she " 'assume[d] all risks of personal injury *** including risk associated with *** equipment *** *and fitness advisory services*.' " (Emphasis added.) *Cox*, 2013 IL App (1st) 122442, ¶ 17. We found that, "[w]hile the phrase 'fitness advisory services' may include a broad range of services offered at the gym, its plain meaning encompasses personal training sessions, which quite literally include advice and instruction to improve physical fitness." *Id*.

¶ 40 The exculpatory clause at issue does not include the term "fitness advisory service," as did the one in *Cox*. The clause does expressly state that plaintiff assumed the risk as to "the selection of exercise programs, methods and type of equipment." Mr. Martinez, as plaintiff's personal trainer, determined plaintiff's exercise program and the method and types of equipment to be used by plaintiff during his exercise sessions. Thus, the exculpatory clause contemplated that plaintiff may suffer injury due to Mr. Martinez's negligent selection of plaintiff's exercise

routine, the methods plaintiff was to follow, and the machines plaintiff was to use and plaintiff assumed all of those risks. See *id*.

¶ 41 We find that the circuit court properly granted Fitness summary judgment as to count I based on the exculpatory clause.

¶ 42 Plaintiff included in his notice of appeal the order of the circuit court denying his motion to reconsider the summary judgment order as to count I. In his initial brief, plaintiff set forth the standard for reviewing an order denying a motion to reconsider and referred to the affidavit of Mr. Ross which had been submitted with his motion to reconsider. Plaintiff, however, did not present arguments as to any error in the circuit court's denial of the motion to reconsider. In his reply brief, plaintiff only responded to the arguments in Fitness's appellee's brief that Mr. Ross's affidavit was not newly discovered evidence and contains improper medical opinions, and that plaintiff failed to provide a transcript of the proceedings as to the motion to reconsider. But, again, he did not argue that the motion was denied in error. Having failed to present a cogent argument as to reversal of the motion to reconsider the entry of summary judgment as to count I, any error has been forfeited. Ill. S. Ct. R. 341 (h)(7) (eff. Jan. 1, 2016).

¶ 43 As to count II, plaintiff argues that there were material issues of fact as to whether Fitness was wilful and wanton and that its conduct was the proximate cause of the injury. We consider the issue of proximate cause, as we find it dispositive.

¶ 44 To establish liability against Fitness, plaintiff must establish that Fitness's conduct was the proximate cause of his injury. *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 19. "Although the issue of proximate cause is ordinarily a question of fact determined by the trier of fact, it is well settled that it may be determined as a matter of

law by the court where the facts as alleged show that the plaintiff would never be entitled to recover." *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257-58 (2004).

¶ 45 Proximate cause consists of "two distinct requirements: cause in fact and legal cause." *Id*. at 258 (citing *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 257-58 (1999)). The acts of a defendant are a cause in fact of the plaintiff's injury "only if that conduct is a material element and a substantial factor in bringing about the injury." *Id*. (citing *Galman*, 188 Ill. 2d at 258). Proximate cause in fact occurs where, absent the defendant's conduct, the injury would not have resulted. *Id.* A legal cause depends on the foreseeability and the relevant inquiry is whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct. *Id*. (citing *Galman*, 188 Ill. 2d at 260). Additionally, a plaintiff must establish proximate cause, with "reasonable certainty and may not be based upon mere speculation, guess, surmise or conjecture." *Mack v. Viking Ski Shop, Inc.*, 2014 IL App (1st) 130768, ¶ 20 (citing *Bourgonje v. Machev*, 362 Ill. App. 3d 984, 1007 (2005)).

¶ 46 Plaintiff contends that Mr. Martinez's conduct, in creating the workout plan, was the proximate cause of his rhabdomyolysis. Plaintiff argues he presented a sufficient evidentiary basis as to proximate cause through the deposition testimony of plaintiff and Mr. Ross, and Mr. Ross's affidavit. The specific question presented is whether plaintiff has presented an evidentiary basis for proximate cause in fact.

¶ 47 "The general rule regarding proof necessary to make a *prima facie* case of proximate cause in a negligence case alleging personal injuries is that medical testimony is not required to prove a causal connection between the defendant's act or omission and plaintiff's injuries where the connection is clearly apparent from the illness and the circumstances attending it." *Harris v. Day*, 115 Ill. App. 3d 762, 770 (1983). However, "a lay witness may *not* offer testimony

pertaining to a specific medical diagnosis unless he or she is properly qualified as an expert to give such testimony." (Emphasis added.) *Steele v. Provena Hospitals*, 2013 IL App (3d) 110374, ¶ 48.

¶ 48 Plaintiff testified that, after the workout sessions, he suffered soreness of muscles and limited range of motion of his arms and, after the second session, his urine was dark and he was hospitalized for several days. Plaintiff further testified he was told by his medical providers that he had rhabdomyolysis and the condition was due to muscle stress from weightlifting. Plaintiff, however, presented no medical testimony or evidence substantiating the diagnosis of rhabdomyolysis, a diagnosis which was made by his medical providers after receiving the results of his urine and blood tests. Plaintiff, as a lay person, was not qualified to testify as to a medical diagnosis of rhabdomyolysis, nor that it had been caused by his workout sessions. Although soreness and limited range of motion as a result of his exercises may have been within his lay knowledge, rhabdomyolysis was not so "clearly" connected. In fact, although he had studied for a paramedic license, plaintiff never worked as a paramedic and admitted that, prior to this incident, he did not know that rhabdomyolysis could be caused by exertion and that he could not diagnose the condition.

¶ 49 Mr. Ross, after reviewing only the complaint and depositions of plaintiff and Mr. Martinez, opined that, based on his knowledge, education and experience as a personal trainer, the rhabdomyolysis was caused by plaintiff's workouts with Mr. Martinez. Mr. Ross, in reaching his conclusion, did not review plaintiff's medical records. Mr. Ross had no medical training, had no personal or professional experience with rhabdomyolysis, and lacked the proper qualifications to opine that plaintiff suffered rhabdomyolysis which was caused by the workouts. See *Ruffin ex rel. Sanders v. Boler*, 384 Ill. App. 3d 7, 18 (2008) (testimony of an expert may be admitted if

expert is qualified to give the opinion and the opinion is supported by adequate facts, data, or opinions). Mr. Ross's conclusion as to causation was no more than conjecture.

¶ 50 We conclude that plaintiff did not present a sufficient factual basis for his diagnosis of rhabdomyolysis, nor for his claim that Fitness's conduct was the proximate cause in fact of this condition. The circuit court properly granted summary judgment on count II.

¶ 51 For the reasons stated, we affirm.

¶ 52 Affirmed.