THIRD DIVISION
June 21, 2017

No. 1-16-1055

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ROBERT GERUE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 11L6910
	)	
UNION PACIFIC RAILROAD COMPANY,	)	The Honorable
	)	Diane Shelley,
Defendant-Appellee.	)	Judge Presiding.
	)	

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Pucinski concurred in the judgment.

ORDER

Held: In FELA negligence case, refusal by trial court to instruct the jury using plaintiff's tendered causation instruction was not reversible error where the jury was properly instructed by pattern jury instructions.

¶ 1 Plaintiff-appellant Robert Gerue filed a complaint sounding in negligence against defendant-appellee Union Pacific Railroad Company ("railroad" or Union Pacific), pursuant to the Federal Employers' Liability Act (FELA) (45 U.S.C. § 51 (2008)), for injuries he allegedly

sustained while employed as a conductor for the railroad. The jury returned a verdict in favor of the railroad. Gerue appeals, contending the trial court erred in its instructions to the jury. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 Evidence was presented at trial showing that, on December 17, 2009, Gerue worked as a conductor for the railroad. He was 61 years old and passed two physical examinations in order to be hired for the position in September 2004. Gerue's job required physical activity including walking on the track right-of-way, throwing switches, and climbing up and down the cars. The day of injury was a snowy day. According to Gerue, his custom and practice was to step up onto the train from the railroad ties, but the ties tended to get slippery on snowy days. That day, the ground was covered with about one inch of snow and Gerue decided not to step up from the railroad tie because it might be slippery. Instead, he stepped from a ballast to the train. The ballast had worn into a V-shape and was further from the train than the railroad tie.

¶ 4 As he pulled himself up into the train, Gerue felt a pain in his leg. Gerue did not immediately seek medical attention. While he initially thought he had pulled a muscle in his leg, it was eventually determined that he had a herniated disc in his back. He underwent spinal surgery in January 2010.

¶ 5 In July 2011, Gerue filed a complaint[1] against Union Pacific, alleging the railroad:

"(a) failed to provide the Plaintiff with a safe place to work;

(b) failed to warn the Plaintiff of the unsafe condition of the low ballast;

(c) violated certain safety standards * * *;

[1] The quoted language here is from Gerue's later amended complaint.

(d) violated [the Illinois Administrative Code] in that the yard walkway was not constructed and maintained in accordance with the aforesaid regulation;

(e) failed to inspect the height of the ballast on a regular basis for unsafe conditions;

(f) failed to enforce safety rules and thereby allowed unsafe practices to become the norm;

(g) ordered Plaintiff to perform his job duties in an unsafe manner; and

(h) was otherwise careless and negligent."

¶ 6 Gerue alleged by this complaint that his injuries "have caused and will continue to cause him great pain, suffering, inconvenience, anguish, and disability" and that he "has been and will in the future be kept from attending his ordinary affairs and duties, and has lost and will lose great gains which he otherwise would have made and acquired" and that he has and will continue to incur medical-related expenses.

¶ 7 Numerous witnesses testified at trial, including Gerue, an engineering expert, and various physicians.

¶ 8 After the close of evidence, the trial court and attorneys for each party participated in a jury instructions conference. The parties agreed on a number of instructions, but disagreed specifically regarding plaintiff's proposed jury instruction No. 10, the Seventh Circuit Instruction 9.02. Defense counsel instead tendered Illinois Pattern Jury Instruction, Civil, 160.01 (hereinafter IPI Civil, No. 160.01). Plaintiff's requested No. 10, about which the parties disagreed, as presented to the court here, reads:

"Defendant 'caused or contributed to' Plaintiff's injury if Defendant's negligence played a part—no matter how small—in bringing about the injury. There can be more than one cause contributing to an injury. The mere fact that an injury occurred does not

necessarily mean that the injury was caused by negligence." Seventh Circuit Pattern Civil Jury Instruction 9.02.

¶ 9 Counsel for Union Pacific objected to this instruction, arguing that the Illinois Pattern Jury Instructions adequately instructed the jury on the causation standard to be applied in FELA cases. He argued:

"[COUNSEL FOR UNION PACIFIC:] We do object there. I think the IPIs provide for the information the jury needs on this issue, and this is cumulative and unnecessary."

Plaintiff's counsel responded that *CSX Transportation v. McBride*, 564 U.S. 685 (2011), mandates that Seventh Circuit Instruction 9.02 be given in a FELA case. A protracted discussion regarding jury instructions and *CSX Transportation* ensued. Counsel for Union Pacific argued:

"[COUNSEL FOR UNION PACIFIC:] [*CSX* only held that a trial court was correct] to refuse a charge embracing stock proximate cause terminology. What we have in the Illinois Pattern Instruction is the very opposite of that. The committee included in the specific FELA jury instructions what a plaintiff needs to prove on causation. And it gave us the language that's in our proposed instruction, which, is, in whole or in part, we're not referring to the stock proximate cause. In the comments, the committee explicitly instructs courts not to look at the stock proximate cause, but to use the one that the committee has drafted with respect to FELA claims."

Eventually, after reviewing the *CSX Transportation* case, the court decided to give IPI Civil, No. 160.01, stating:

"THE COURT: I respectfully disagree with you, plaintiff. I don't see that as the holding in [the *CSX Transportation* case, and I'm looking for dicta just to support your argument, and I don't see any dicta to that effect either."

¶ 10 Plaintiff's counsel urged the court to consider the *CSX Transportation* case again, stating:

> "[COUNSEL FOR PLAINTIFF:] It specifically says, Judge, that you are properly instructed by given [*sic*] – I mean, it's a 2011 U.S. Supreme Court Case that says give this instruction. I mean, I don't understand how a court could not give it."

The trial court again disagreed with plaintiff.

¶ 11 Counsel for Union Pacific reiterated that IPI Civil, No. 160.01 adheres to the U.S. Supreme Court's holding in *CSX Transportation v. McBride*, stating:

> "[COUNSEL FOR UNION PACIFIC:] * * * [IPI Civil, No. 160.01] explicitly rejects what the Supreme Court is calling a stock proximate cause instruction. The jury is instructed in whole or in part – I don't see any reason to deviate from the IPI pattern on this issue when they've provided a specific FELA instruction."

Plaintiff's counsel continued to disagree, but the court rejected plaintiff's proposed jury instruction number 10 that sought to use Seventh Circuit Instruction 9.02. Counsel asked:

> "[COUNSEL FOR PLAINTIFF:] Are you going to instruct the jury on definition of causation in [a] FELA case, your Honor?"

And the court responded:

> "THE COURT: I believe it's covered by [IPI Civil, No.] 160.01."

¶ 12 In closing arguments, plaintiff's counsel argued that Gerue's injury was caused because the railroad negligently maintained the ballast such that a V-shaped indentation developed, causing him to have to step further than was safe in order to get on the train. Counsel for the railroad disputed this, arguing that the railway was reasonably safe and that much of Gerue's injury actually occurred after he left the railyard. Neither party addressed causation specific to FELA.

¶ 13 The trial court instructed the jury using, in part, IPI Civil, No. 160.01. This instruction, as given, provides:

> "At the time of the occurrence, there was in force a federal statute known as the Federal Employers' Liability Act. That Act provided that whenever an employee of a railroad is injured while engaged in the course of his employment, the railroad shall be liable in damages to the injured employee, where the injury results in whole or in part from the negligence of any of the officers, agents, or other employees of the railroad or in its cars, engines, machinery, track, roadbed, works, or other equipment.
>
> Contributory negligence on the part of the injured employee shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee." IPI Civil, No. 160.01.

¶ 14 The court also instructed the jury by Illinois Pattern Jury Instruction, Civil, 160.04, which states:

> "When I use the expression 'contributory negligence,' I mean negligence on the part of the plaintiff that caused or contributed in whole or in part, to the alleged injury." IPI Civil, No. 160.04.

¶ 15 The court also instructed the jury by Illinois Pattern Jury Instruction, Civil, 160.02, which, as given, provides:

> "The plaintiff denies that he did any of the things claimed by the defendant, that he was negligent in doing any of the things claimed by the defendant, and denies that any claimed act or omission on his part caused in whole or in part his claimed injuries." IPI Civil, No. 160.02.

¶ 16 Additionally, the court instructed the jury by Illinois Pattern Jury Instruction, Civil, 160.03, which, as given, reads in pertinent part:

"The plaintiff has the burden of proving each of the following propositions:

First, that he was injured and sustained damages while he was engaged in the course of his employment by the defendant.

Second, that the defendant violated the Federal Employers' Liability Act in one of the ways claimed by the plaintiff as stated to you in these instructions.

Third, that the injury and damages to Plaintiff resulted, in whole or in part, from a violation of the Federal Employers' Liability Act. ***" IPI Civil, No. 160.03.

¶ 17 The jury returned a verdict for the railroad. Plaintiff appeals.

¶ 18 II. ANALYSIS

¶ 19 On appeal, plaintiff contends the trial court committed reversible error by refusing to instruct the jury by jury instruction No. 10, the Seventh Circuit jury instruction 9.02, in addition to IPI Civil, No. 160.01. Specifically, plaintiff argues that, by not allowing jury instruction No. 10, the court failed to instruct the jury on the FELA definition of causation, that is, the "no matter how small" language. He contends this is reversible error. We disagree.

¶ 20 As an initial matter, plaintiff has preserved this issue by first raising it at trial and again raising it in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988) (In order to preserve an issue for appeal, a party must first make an objection to the alleged error at trial and then raise it in a posttrial motion).

¶ 21 The purpose of the FELA is to provide a remedy to railroad employees for injuries and death resulting from accidents on interstate railroads. "FELA provides a federal remedy for

railroad workers who suffer personal injuries because of the negligence of their employers or their fellow employees." *Myers v. Illinois Cent. R. Co.*, 323 Ill. App. 3d 780, 784 (2001). This remedy is the exclusive remedy for a railroad employee injured due to his employer's negligence. *Myers*, 323 Ill. App. 3d at 785 (citing *Wabash R.R. Co. v. Hayes*, 234 U.S. 86, 89 (1914)). As a general matter, FELA actions adjudicated in state courts are subject to state procedural rules, but the substantive law governing them is federal. *St. Louis Southwestern Ry. Co. v. Dickerson*, 470 U.S. 409, 411 (1985).

¶ 22 To prove negligence under the FELA, a plaintiff is required to show: "(1) defendant is a common carrier; (2) plaintiff was an employee of the common carrier; (3) plaintiff's injury was sustained while employed by the common carrier; and (4) defendant's negligence is the cause of the injuries." *Larson v. CSX Transportation, Inc.*, 359 Ill. App. 3d 830, 834 (2005).

¶ 23 Under the FELA, employers such as defendant have a duty to provide a reasonably safe work place, and an injured railroad employee can recover all of his damages from his employer if the employer's negligence caused any part of the employee's injury. *Norfolk & Western Ry. Co. v. Ayers*, 538 U.S. 135, 165-66 (2003). "[T]he test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought." *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 500, 506 (1957). The United States Supreme Court addressed the issue of causation in FELA cases in *CSX Transportation v. McBride*, 564 U.S. 685, 699 (2011). Under FELA, "railroads are liable if their negligence played any part, even the slightest, in producing the injury." *CSX Transportation*, 564 U.S. 685, 699 (2011). If negligence is proven and is shown to have played any part in producing the injury, the railroad is liable in damages even if the

extent of the injury or the manner in which it occurred was neither probable nor foreseeable. *CSX Transportation*, 564 U.S. at 699.

¶ 24 Our supreme court recently discussed the FELA, noting:

> "Enacted in 1908, the FELA is the exclusive means by which railroad employees can recover for injuries against their employers. The FELA provides, in relevant part, that '[e]very common carrier by railroad while engaging in commerce * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce * * * for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier.' 45 U.S.C. § 51 (2006). In order to recover damages under the FELA, a plaintiff must show that the railroad was engaged in interstate commerce, that the plaintiff was an employee in interstate commerce acting in the scope of his employment, that his employer was negligent, and that his injury resulted 'in whole or in part' from his employer's negligence. *Id.*; see *e.g.*, *Myers v. Illinois Central R.R. Co.*, 629 F.3d 639, 642 (7th Cir. 2010) ('[A]n employee must prove that the railroad was negligent and that the railroad's negligence caused the injury at issue.').
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> Although the FELA follows a general tort law framework, the statute does not incorporate the various formulations of 'proximate cause' found in nonstatutory common-law actions. [Footnote omitted.] *CSX Transportation, Inc. v. McBride*, 564 U.S. 685 *** (2011). In this context,
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> > '[t]he term "proximate cause" is shorthand for a concept: Injuries have countless causes, and not all should give rise to legal liability. See W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 42, p. 273

(5th ed. 1984) (hereinafter Prosser and Keeton). "What we … mean by the word 'proximate,'" one noted jurist has explained, is simply this: "[B]ecause of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point." *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 352 888 (1928) (Andrews, J., dissenting).' (Emphasis in original.) *CSX Transportation*¸ 564 U.S. at 692-93 [.]

Thus, while a plaintiff in a FELA action must establish that a defendant's negligent conduct was a cause in fact of his injuries, he need not establish the 'foreseeability' or 'probability' of the injury that might be required at common law under the doctrine of 'proximate cause.' *Id*. at 703-04[.] Instead, the test 'is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought.' *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 500, 506 [1957]. Causation issues are generally to be left to the jury which can use its ' "common sense" ' in reviewing the evidence to avoid awarding damages in 'far out "but for" scenarios.' *CSX Transportation*¸ 564 U.S. at 704 [.]" *Wardwell v. Union Pacific R.R. Co.*, 2017 IL 120438, ¶¶ 12-14.

¶ 25 Congress' intent in using "in whole or in part" as the causation standard was to prevent a plaintiff's contributory negligence from acting as a complete bar to recovery. *Norfolk Southern Ry. Co. v. Sorrell*, 549 U.S. 158, 165-71 (2007). In *CSX Transportation*, the U.S. Supreme Court concluded that FELA did not "incorporate 'proximate cause' standards developed in common-law tort actions." *CSX Transportation*, 564 U.S. at 689. It held that the proper jury instruction in FELA cases "simply tracks the language Congress employed, informing juries that a defendant railroad caused or contributed to a plaintiff employee's injury if the railroad's negligence played

any part in bringing about the injury." *CSX Transportation*, 564 U.S. at 689. In coming to this conclusion, the Court reviewed *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500 (1957), and considered that FELA was enacted because the " 'harsh and technical' rules of state common law had 'made recovery difficult or even impossible' for injured railroad workers." *CSX Transportation*, 564 U.S. at 695. The Court found that the Seventh Circuit pattern jury instruction 9.02[2] tracked statutory language as well as *Rogers'* description of the FELA test for proximate causation. *CSX Transportation*, 564 U.S. at 699. In addition, the Seventh Circuit instruction avoided " 'dialectical subtleties' that confound attempts to convey intelligibly to juries just what 'proximate cause' means," and "uses every day words contained in the statute itself." *CSX Transportation*, 564 U.S. at 696. "Jurors can comprehend those words and apply them in light of their experience and common sense." *CSX Transportation*, 564 U.S. at 696.

¶ 26 A trial court is required to use an Illinois Pattern Jury Instruction when it is applicable in a civil case after giving due consideration to the facts and the prevailing law, unless the court determines that the instruction does not accurately state the law. *Schultz v. Northeast Regional Commuter R.R. Corp.*, 201 Ill. 2d 260, 273 (2002); Ill. S.Ct. R. 239(a) (eff. Jan. 1, 2011). If the pattern instruction does not accurately state the law, the court may instruct the jury pursuant to a nonpattern instruction. *Schultz*, 201 Ill. 2d at 273.

¶ 27 Generally, a trial court's decision to grant or deny a jury instruction is reviewed for abuse of discretion. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 505 (2002). In those instances, we must determine "whether, taken as a whole, the instructions are sufficiently clear so as not to mislead and whether they fairly and correctly state the law." (Internal quotation marks omitted.)

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[2] The specific instruction in *McBride* read:

> " 'Defendant "caused or contributed to" Plaintiff's injury if Defendant's negligence played a part—no matter how small—in bringing about the injury. The mere fact that an injury occurred does not necessarily mean that the injury was caused by negligence." *McBride*, 564 U.S. at 690.

Studt v. Sherman Health Systems, 2011 IL 108182, ¶ 13; *Schultz*, 201 Ill. 2d at 273 (The trial court has discretion to determine which instructions to give the jury, and that discretion is whether, taken as a whole, the instructions fairly, fully, and comprehensively apprise the jury of the relevant legal principles). When the question is whether the applicable law was conveyed accurately, however, the issue is a question of law, and our standard of review is *de novo*. *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 170 (2008). A reviewing court ordinarily will not reverse a trial court for giving faulty instructions unless the instructions clearly misled the jury and resulted in prejudice to the appellant. *Schultz*, 201 Ill. 2d at 274.

¶ 28 Here, we find that the trial court did not abuse its discretion in refusing to instruct the jury based on Plaintiff's No. 10, the Seventh Circuit Pattern Jury Instruction. Instead, the jury was given instructions that correctly incorporated the FELA statutory standard on causation. The jury heard the evidence presented and returned a verdict in favor of defendant.

¶ 29 At the jury instructions conference in the case at bar, plaintiff requested that the jury be instructed as to causation by Seventh Circuit jury instruction 9.02. That instruction, as requested here, provides:

> "Defendant 'caused or contributed to' Plaintiff's injury if Defendant's negligence played a part—no matter how small—in bringing about the injury. There can be more than one cause contributing to an injury. The mere fact that an injury occurred does not necessarily mean that the injury was caused by negligence." Seventh Circuit Pattern Civil Jury Instruction 9.02.

¶ 30 The court denied plaintiff's request for Seventh Circuit jury instruction 9.02, finding that the definition of causation in a FELA case was covered by IPI Civil, No. 160.01. That instruction, IPI Civil, No. 160.01 provides in full:

"At the time of the occurrence, there was in force a federal statute known as the Federal Employers' Liability Act. That Act provided that whenever an employee of a railroad is [injured] [or] [killed] while engaged in the course of his employment, the railroad shall be liable in damages [to the injured employee] [and/or] [for the death of the employee], where the [injury] [and/or [death] results in whole or in part [from the negligence of any of the officers, agents, or other employees of the railroad] [or] [by reason of any defect or insufficiency, due to the railroad's negligence, in its (cars) (engines) (appliances) (machinery) (track) (roadbed) (works) (boats) (wharves) (other equipment)].

[Contributory negligence on the part of the injured employee shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.]"[3] IPI Civil, No. 160.01.

IPI Civil, No. 160.01 as given in this case provides:

"At the time of the occurrence, there was in force a federal statute known as the Federal Employers' Liability Act. That Act provided that whenever an employee of a railroad is injured while engaged in the course of his employment, the railroad shall be liable in damages to the injured employee, where the injury results in whole or in part from the negligence of any of the officers, agents, or other employees of the railroad or in its cars, engines, machinery, track, roadbed, works, or other equipment.

[3] The "Notes on Use" section instructs:

"The bracketed material should be selected to fit the charges of negligence to be submitted to the jury. For example, in a case involving only allegations charging negligence of an employee, the bracketed phraseology concerning equipment should be omitted."

And:

"Moreover, IPI 15.01 dealing with proximate cause should not be used in a FELA case."

> Contributory negligence on the part of the injured employee shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee." IPI Civil, No. 160.01.

¶ 31 As noted above, Congress' intent in using "in whole or in part" as the FELA causation standard was to prevent a plaintiff's contributory negligence from acting as a complete bar to recovery. See *Norfolk Southern Ry. Co*., 549 U.S. at 165-171. In accordance with this standard, a railroad's liability is established if its "negligence played any part, even the slightest, in producing the injury or death for which damages are sought." *Rogers*, 352 U.S. at 506. We find that IPI Civil, No. 160.01 as given in this case directly tracks the "in whole or in part" FELA language, which provides:

> "Every common carrier by railroad while engaging in commerce between any of the * * * States and Territories * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce * * * for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment." 45 U.S.C.A. § 51 (West 2008).

Although plaintiff urges us to find that "IPI 160.01 did not fairly, fully or comprehensively apprise the jury of the applicable FELA causation standard as it lacked the definitional language approved by the Supreme Court in [Seventh Circuit jury instruction] 9.02," we decline to do so, where the language of the tendered instruction specifically included "in whole or in part" causation language that directly tracked the FELA causation standard.

¶ 32 In addition, our opinion in this matter is further supported by the Illinois Supreme Court Committee on Jury Instructions in Civil Cases comment to IPI Civil, No. 160.01, which states in pertinent part:

> "The [IPI Civil, No. 160.01] instruction paraphrases the pertinent portions of the [FELA]. An instruction in the language of the statute has been sustained. *Fritz v. Pennsylvania R. Co.*, 185 F.2d 31 (7th Cir. 1950), and authorities therein cited. The categories of equipment set out in the bracket meets the requirement that only the specific provisions of the Act actually involved should be mentioned. *Terminal R. Ass'n of St. Louis v. Fitzjohn*, 165 F.2d 473, 480 (8th Cir. 1948).
>
> Conforming to the committee's decision to follow the statutory language, the phrase 'results in whole or in part from the negligence' has been employed in lieu of the proximate cause terminology more customary in common law negligence actions. Such an instruction is adequate, and the addition of the terminology 'proximate' adds nothing and is not essential. *Gilmore v. Toledo P.W. R.R. Co.*, 36 Ill. 2d 510, 515, 224 N.E. 2d 228, 231 (1967)."

As can be seen, the Committee comment demonstrates that the Committee's intention was for IPI Civil, No. 160.01 to function as the instruction that informs the jury about the standards of law to be employed in considering a FELA claim. This comment reflects the instruction's direct use of the FELA's precise causation language of "results in whole or in part" in lieu of the proximate cause terminology.

¶ 33 Plaintiff's reliance on *CSX Transportation* to urge that the trial court committed reversible error by refusing to provide the jury the Seventh Circuit Instruction 9.02 is unpersuasive. According to plaintiff's reading of *CSX Transportation*, courts are required to

instruct juries in FELA cases using the "no matter how small" language, and refusing to instruct the jury using that language is a failure to instruct on causation at all.

¶ 34 Our understanding of *CSX Transportation*, however, does not support such a reading. Instead, while the *CSX Transportation* addressed the appropriate FELA standard of causation in the context of jury instructions where the *CSX Transportation* defendant appealed the trial court's refusal of a proximate cause jury instruction, the court did not hold that Seventh Circuit Instruction 9.02 must be used in instructing juries on causation. *CSX Transportation*, 564 U.S. at 700-201. Rather, the U.S. Supreme Court affirmed its prior holding in *Rogers*, 352 U.S. 500, that FELA does not "incorporate 'proximate cause' standards developed in common-law tort actions." *CSX Transportation*, 564 U.S. at 689. It held that the proper jury instruction in FELA cases "simply tracks the language Congress employed, informing juries that a defendant railroad caused or contributed to a plaintiff employee's injury if the railroad's negligence played any part in bringing about the injury." *CSX Transportation*, 564 U.S. at 689. The Court explained that the Seventh Circuit Instruction 9.02, as well as other instructions used in the *Rogers* case, use "the everyday words contained in the statute itself. Jurors can comprehend those words and apply them in light of their experience and common sense. Unless and until Congress orders otherwise, we see no good reason to tamper with an instruction tied to FELA's text, long employed by lower courts, and hardly shown to be unfair or unworkable." *CSX Transportation*, 564 U.S. at 700-01. The Court held: "it is not error in a FELA case to refuse a charge embracing stock proximate cause terminology." *CSX Transportation*, 564 U.S. at 701.

¶ 35 Here, we find that IPI Civil, No. 160.01 properly instructs the jury on FELA causation where it is specifically tailored to avoid misleading the jury on FELA causation through the use of "stock proximate cause terminology." See, *e.g.*, the Illinois Supreme Court Committee on Jury

Instructions in Civil Cases comment to IPI Civil, No. 160.01.[4] In addition, IPI Civil, No. 160.01 directly employs the plain and everyday language of the FELA statute itself. See, *e.g.*, *CSX Transportation*, 564 U.S. at 700-01 (affirming use of instructions that use "the everyday words contained in the statute itself" that jurors can comprehend and apply in "light of their experience and common sense"). By using FELA's "results in whole or in part" language, IPI Civil, No. 160.01 fully and accurately instructed the jury on FELA causation.

¶ 36 Plaintiff's argument, then, that the jury "needed a definition of causation to fairly consider the evidence" "that established that the Defendant's negligence caused [plaintiff's injuries] in whole or in part no matter how slight," and that the court failed to so instruct, fails. The court properly instructed the jury with Illinois Pattern Instructions explaining that the railroad would be liable for plaintiff's injuries where the injury resulted "in whole or in part" from the railroad's negligence.

¶ 37 We note, too, that, as the jury in this cause returned a general verdict in favor of the railroad and against plaintiff, it may have decided the case on negligence and never reached causation. See, *e.g.*, *Jones v. Beck*, 2014 IL App (1st) 131124, ¶¶30-32.

¶ 38 In this case, the jury was given instructions that correctly incorporated the FELA statutory standard on causation. The jury heard the evidence presented and returned a verdict in

[4] The Illinois Supreme Court Committee on Jury Instructions in Civil Cases comment to IPI 160.01 provide:

> "The [160.01] instruction paraphrases the pertinent portions of the [FELA]. An instruction in the language of the statute has been sustained. *Fritz v. Pennsylvania R. Co.*, 185 F.2d 31 (7th Cir. 1950), and authorities therein cited. The categories of equipment set out in the bracket meets the requirement that only the specific provisions of the Act actually involved should be mentioned. *Terminal R. Ass'n of St. Louis v. Fitzjohn*, 165 F.2d 473, 480 (8th Cir. 1948).
>
> Conforming to the committee's decision to follow the statutory language, the phrase 'results in whole or in part from the negligence' has been employed in lieu of the proximate cause terminology more customary in common law negligence actions. Such an instruction is adequate, and the addition of the terminology 'proximate' adds nothing and is not essential. *Gilmore v. Toledo P.W. R.R. Co.*, 36 Ill. 2d 510, 515, 224 N.E. 2d 228, 231 (1967)."

favor of defendant. We find no error here, where the jury was properly instructed by IPI Civil, No. 160.01.

¶ 39 III. CONCLUSION

¶ 40 For all of the foregoing reasons, the decision the circuit court of Cook County is affirmed.

¶ 41 Affirmed.