2017 IL App (1st) 161549-U

FIRST DIVISION
July 10, 2017

No. 1-16-1549

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HUONG BUI, as Plenary Guardian on behalf of the Estate and Person of CHRISTINA BUI and JAN KRETZSCHMAR,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 13 L 6856
CITY OF CHICAGO, a municipal corporation, WILLIAM H. STEINER, and JOHN M. PEARSON,	)	Honorable Thomas V. Lyons,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justice Simon and Justice Mikva concurred in the judgment.

ORDER

***Held*:** The judgment of the trial court is affirmed. The two-issue rule does not apply to the facts of this case. The trial court did not err in denying plaintiffs' motion for judgment notwithstanding the verdict. The trial court did not abuse its discretion in denying plaintiffs' motion for a new trial based on allegedly improper remarks made during closing argument.

¶ 1 Plaintiffs-appellants, Huong Bui, on behalf of Christina Bui (hereinafter "Bui") and Jan Kretzschmar,[1] brought this lawsuit against the defendants-appellees, City of Chicago, William Steiner (hereinafter "Steiner") and John Pearson (hereinafter "Pearson") two paramedics employed by the City of Chicago (collectively "the paramedics"). On June 14, 2012, Steiner and Pearson responded to an emergency call about an individual having an allergic reaction. Bui and her husband, Jan, were eating Chinese food in their hotel room when Bui went into anaphylactic shock after biting into an egg roll containing peanuts. Steiner and Pearson provided treatment when they arrived then transported Bui to the hospital. Upon arrival at the hospital, Bui was suffering from cardiac arrest and in serious distress. While doctors were able to save Bui's life, she suffered brain damage from incident.

¶ 2 Bui's guardian, Huong Bui, brought suit against the City of Chicago, Steiner, and Pearson alleging that the paramedics' treatment of Bui prior to arriving at the hospital was willful and wanton and ultimately caused her brain damage. The case proceeded to trial. Defendants argued that their treatment was not willful and wanton, their conduct was not the proximate cause of Bui's injuries, and Bui was more than 50 percent negligent in causing her injuries. Both sides presented expert testimony supporting their theory of the case. After deliberations, a jury returned a general verdict in favor of defendants. Additionally, they answered two special interrogatories in favor of the defendants. The first interrogatory asked whether the two paramedics' conduct was willful and wanton, while the second asked whether the paramedics' actions were the proximate cause of Bui's injuries. In her posttrial motion, Bui moved for judgment notwithstanding the verdict (judgment *n.o.v.*), or, in the alternative, a new trial. The trial court denied Bui's motion. This timely appeal then followed.

[1] Jan Kretzschmar's claims were not appealed and are not before this court.

¶ 3 Bui raises two arguments on appeal: (1) the trial court erred in denying her motion for judgment *n.o.v.* because the evidence overwhelmingly showed defendants actions were willful and wanton; and (2) the trial court erred in denying her motion for a new trial based on statements made during defendants' closing argument. For the reasons set forth below, we affirm the decision of the trial court.

¶ 4 JURISDICTION

¶ 5 On December 3, 2015, the jury returned a general verdict in favor of defendants. On December 31, 2015, plaintiffs filed a motion for judgment *n.o.v.* or in the alternative a new trial. The trial court denied plaintiffs' posttrial motion on May 4, 2016. Plaintiffs filed their notice of appeal on June 2, 2016. Accordingly, this court has jurisdiction over this matter pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. May 30, 2008).

¶ 6 BACKGROUND

¶ 7 On June 14, 2012, Bui and Kretzschmar flew into Chicago to search for an apartment. After landing at O'Hare airport, they took the train to the Cumberland stop and walked the remaining way to their hotel. They checked into their room, looked up nearby restaurants and decided to order from a Chinese restaurant. The couple walked to the restaurant, placed an order, and walked back to their hotel to eat around 7:45 p.m. Bui's meal had come with an egg roll and upon biting into it, she immediately spat it out. At trial, Kretzschmar testified that upon spitting out the egg roll, Bui stated, "I think there's something in here that I'm allergic to." Bui then took two Benadryl because her tongue started to itch. Bui, a trained EMT, did not think it was an emergency situation requiring outside help. Thereafter, Bui ate only the rice, but within a short

time the itching began to spread and hives developed. Kretzschmar explained that this was the typical progression of Bui's allergic reactions, as was her Benadryl use. It often took awhile for the Benadryl to take effect.

¶ 8 The itching intensified and Kretzschmar suggested Bui shower to relieve it. A short time later, Bui got out of the shower and in a choppy voice explained to Kretzschmar that she was having difficulty breathing. Kretzschmar asked if she had an EpiPen, and Bui indicated that she did not. Kretzschmar then called down to the front desk to inquire if they had an EpiPen and was informed that the hotel did not have one. The front desk did inform Kretzschmar that they would call an ambulance and send someone up who know CPR. During this time, Bui had retrieved her nebulizer-inhaler and began using it. Kretzschmar called back to the front desk to ask whether 911 was called and to make sure they did not have an EpiPen. Phone records show the hotel called 911 at 8:51 p.m. and again at 8:53 p.m.

¶ 9 After making the second call, Kretzschmar carried Bui to the elevator to take her down to the lobby. Bui began to vomit and lost consciousness. When they arrived in the lobby, Kretzschmar put Bui on a couch, found her pulse, and started providing rescue breaths because Bui had stopped breathing. He continued until the paramedics arrived and by this time Bui's lips were purple and her eyes were swollen. Kretzschmar told the paramedics that Bui was having an allergic reaction, was not breathing, but did have a pulse. He further explained that he had been giving rescue breaths; she had already taken two Benadryl, and needed epinephrine.

¶ 10 Steiner and Pearson were operating Ambulance 2 on June 14, 2012, and were dispatched at 8:57 p.m. for an allergic reaction. They were with Bui by 9:01 p.m. An additional firefighter crew, Truck 9, which included an additional paramedic and EMT, accompanied them. Steiner and Pearson knew that Bui was in respiratory distress. They measured her at 8 breaths per

minute. Pearson testified that he knew Bui's breathing was inadequate and that it was caused by her severe allergic reaction, which needed to be reversed. They used pulse oximetry to measure the oxygen in Bui's blood and according to Steiner, Bui's oxygenation was still good.

¶ 11 The "run report" prepared by Steiner after dropping off Bui at the hospital detailed the treatment provided at the hotel. Upon arrival at the scene, firefighters placed a non-rebreather mask on Bui. At 9:04 p.m., the paramedics took Bui's vitals. They then gave her a 1 milligram shot of epinephrine, which is contrary and greater than the Standing Medical Order (SMO) for anaphylaxis calls of .3 milligrams. Steiner explained that he probably administered the shot because Pearson was trying to place the IV. Steiner gave the higher dose due to the severity of Bui's anaphylaxis when they arrived. A hotel employee present at the scene observed the paramedics administer "something" and immediately noticed Bui's swelling decline.

¶ 12 The run report noted two failed attempts to intubate Bui at approximately 9:14 p.m. Bui's jaw was clinched, which prevented the paramedics' intubation attempts. Unlike an emergency room, paramedics do not carry the device necessary to relax a jaw. Despite Bui's jaw, Steiner attempted to intubate in part because the swelling in her face had decreased. Steiner explained that an intubation attempt would include using a bag mask to hyperventilate the patient before attempting to insert the endotracheal tube. The paramedics utilized a bag valve mask between the two attempts and used the mask consistently after the second failed attempt. After the second failed intubation attempt, one of the paramedics administered a second 1 milligram dose of epinephrine. This was at 9:15 p.m.

¶ 13 The paramedics chose not to give Bui Benadryl because she had already taken 50 milligrams in the past hour and if it was not working at this point, it was not going to do anything. Steiner also explained that Benadryl can act as a depressant. They chose not to provide

albuterol because of the time it would take to administer and would not be effective without intubating Bui. They left for the hospital at 9:21 p.m. with Steiner in the back of the ambulance with Bui while Pearson drove. According to the hospital records, it was informed of Bui's status at 9:24 p.m. During that call with the hospital, Steiner reported Bui's respiratory rate as 8, but they were "bagging" her at 16. During the ambulance ride an IV was successfully placed. They arrived at Resurrection Hospital at 9:26 p.m.

¶ 14 During trial, Steiner and Pearson testified twice regarding their treatment of Bui. During plaintiff's case, Steiner could not recall if somebody started bagging Bui while in the hotel lobby, but he did not bag her until the ambulance was in transit. Likewise, Pearson could not recall who specifically bagged Bui, but he knew that it had been performed. When he testified again, Steiner recalled "instructing one of the firefighters to squeeze with Bui's breath until he felt resistance." He added that he personally bagged Bui in the ambulance, but a different person was operating the bag valve mask while he called in telemetry data to the hospital. Both the run report and non-transport report failed to indicate that a bagging had taken place. Moreover, defendant never specifically identified who in fact bagged Bui.

¶ 15 As the ambulance arrived at the hospital, Bui went into cardiac arrest. In the emergency room, doctors worked to both restart Bui's heart and regulate her breathing. Bui was successfully intubated four minutes after arrival with use of paralytics to relax her jaw. According to emergency room records, Bui's pulse returned eight minutes after intubation.

¶ 16 Dr. David Topin, a pulmonary medicine specialist, treated Bui in the hospital. Dr. Topin explained the basic function of the lungs as oxygenation (getting oxygen into the body) and ventilation (getting carbon dioxide out). Upon arrival at the hospital, Bui's oxygen level in her blood was at "a safe number" and Dr. Topin focused on managing Bui's ventilation to respond to

the high level of carbon dioxide. Even though Bui had been intubated and placed on a ventilator, "[s]he was still having significant bronchospasm or bronchoconstriction issues," and difficulty eliminating carbon dioxide. Dr. Topin explained that in order for the carbon dioxide level to continue to rise from respiratory acidosis, the patient would have to be breathing less and less over the passage of time. When questioned about the use of a bag valve mask to ventilate a patient, Dr. Topin testified, "[i]f you couldn't intubate, then potentially a bag mask to ventilate someone, you might be able to ventilate, yes." In his opinion, Bui's high carbon dioxide levels were caused by her anaphylaxis along with the triggering of her asthma.

¶ 17 Dr. Nicole Colucci also treated Bui upon her arrival to the emergency room. Dr. Colucci noted that as a general matter oxygenation is more important ventilation. She explained that even at the hospital and on a ventilator, Bui was difficult to ventilate.

¶ 18 Both sides presented several expert witnesses to support their theory of the case. Frank Nagorka, a paramedic expert called by plaintiff, stated that the paramedics should have taken Bui to the hospital "immediately" after arriving at the hotel. Under cross-examination, he explained he meant, "5, 7 minutes, they should have been going to the hospital." Nagorka took issue with Steiner's conduct while at the hotel. He specifically questioned why Steiner wasted time taking Bui's history. In his opinion, Steiner should have immediately taken steps to maintain Bui's airway and assist with ventilation. Nagorka, along with all of the other experts, testified that a non-rebreather mask does not push oxygen into the lungs or provide positive pressure ventilation. In Nagorka's opinion, the non-rebreather mask should not have been used on Bui. Nagorka also concluded that the paramedics deviated from the anaphylaxis SMOs by failing to secure and maintain an airway, failing to secular vascular access in the lobby of the hotel, failing to secure intraosseous access after failing to establish vascular access, giving three times the

prescribed dose of epinephrine without authority (on two separate occasions), failing to administer Benadryl, failing to give albuterol and Atrovent, and failing to administer an IV fluid bolus.

¶ 19 Plaintiff's emergency room expert, Dr. Karen Jubanyik, agreed with Nagorka, that when the paramedics arrived at the hotel, Bui required assistance with ventilation by either bag valve mask or intubation. The failure to properly ventilate Bui while at the hotel permitted carbon dioxide and acid to build up in her body. Based on Bui's actions prior to the paramedics arrival, Jubanyik concluded that Bui became acidemic while in their care. In her opinion, this led to Bui's cardiac arrest while in transit to the hospital. Dr. Jubanyik concluded that in her opinion, Bui would not have suffered brain damage if she had been timely and adequately ventilated. She further adduced that the excess doses of epinephrine, the failure to administer albuterol, and the failure to administer Benadryl all made Bui's condition worse.

¶ 20 Plaintiffs' allergy, asthma, and immunology expert, Dr. Stanley Michael Phillips, agreed that the failure to properly ventilate was the proximate cause of Bui's injuries. He had also concluded that the two doses of epinephrine were excessive, adding stress to Bui's heart and predisposing her to cardiac complications.

¶ 21 Plaintiff also called Dr. Steven Ritter, a critical care expert. In his opinion, Bui's heart attack was caused by the acid build up coupled with the hypoxia. Given Bui's carbon dioxide levels at the hospital, the paramedics had not properly assisted Bui's ventilation with either a bag valve mask or intubation.

¶ 22 The defense called Dr. Max Koenigsberg, an emergency physician and paramedic, to rebut most of plaintiffs' case. Dr. Koenigsberg opined that Bui's heart attack was not caused by the paramedics but a combination of Bui's allergies and her asthma. In his opinion, the

paramedics were within the standard of care when they immediately injected Bui with epinephrine before taking other steps listed in the SMO. The paramedics did not have to administer Benadryl because it was not a lifesaving intervention and did not need to administer albuterol, because it is supplementary to epinephrine. He also agreed with the paramedics testimony that because Bui's blood pressure did not drop below 100, there was no reason to administer a fluid bolus. He also disagreed with Nagorka that the failure to place the IV required Pearson to proceed to an interosseous placement. Moreover, the twenty minutes the paramedics spent on scene was average for a call involving respiratory distress.

¶ 23 He explained that the process of intubation includes using a bag valve mask to oxygenate a patient immediately before attempting to intubate. In a conflicting opinion with plaintiffs' experts, Dr. Koenigsberg interpreted the run report's description of two failed attempts to intubate Bui to mean the paramedics used a bag mask valve twice, once before each attempt. In his opinion, the combination of Bui's allergic reaction and underlying asthma made it exceedingly difficult to ventilate. Disagreeing with plaintiffs' experts, he opined that a bag valve mask would not have removed the carbon dioxide and the use of the non-rebreather mask in the lobby was appropriate.

¶ 24 The defense also presented the testimony of Dr. Guy Dugan. He agreed with Dr. Koenigsberg that the use of a 1 milligram dose of epinephrine was clinically appropriate and that the two doses of epinephrine given was "the only thing, in fact, that could have potentially averted [Bui's injuries]." He believed there was nothing else the paramedics could have done. In his opinion, a successful intubation or earlier use of the bag valve mask would not have prevented Bui's injuries. Under cross-examination, Dr. Dugan maintained that securing Bui's airway would not have slowed down her cardiac arrest. He based this on the fact that at the

hospital Bui was still difficult to ventilate and it took more than a day to reduce the carbon dioxide levels in her blood back to normal. Dr. Dugan also believed that had Bui had an EpiPen, the injuries might have been avoided. In his opinion, the best opportunity to avert an anaphylactic crisis is using epinephrine within the first 30 minutes.

¶ 25 The defense also called Dr. Laura Rodgers, an expert in allergies and asthma. She testified that those suffering from a peanut allergy have a high risk of fatality and that this risk is increased when the individual suffers from asthma. In her opinion, if Bui had an EpiPen with and administered it when her allergic reactions first started, Bui would have survived without significant injuries. However, Dr. Rodgers acknowledged that even the early administration of epinephrine would not necessarily reverse the course of anaphylaxis "100 percent" because anaphylaxis can progress with all available treatments. Dr. Rodgers supported the paramedics decision to administer two high doses of epinephrine contending that without them Bui may have died.

¶ 26 The parties then proceeded to closing arguments. Relevant to this case is the following portion of defense counsel's closing argument:

> MS. BAGDON: Judge Lyons will also instruct you about the law you must follow; and he'll instruct you that, in order to find the defendants liable for plaintiff's injuries, they must prove the paramedics engaged in a course of action that was willful and wanton.
>
> Everybody's heard of negligence or that someone was found negligent in a lawsuit, and some lawsuits are based on claims of negligence. But this lawsuit against the paramedics is not. Whatever you think about lawsuits, negligence is not a part of the claim against the paramedics.
>
> Here, the plaintiffs have alleged, and they have to prove, that the paramedics were willful and wanton in their course of action.
>
> Willful and wanton conduct is utter indifference to or conscious disregard for the safety of others.
>
> Can we have Exhibit 25? You can all read it: "When I use the expression willful and wanton conduct, I mean a course of action which

shows an utter indifference to or conscious disregard for the safety of others."

And the law recognizes that emergency personnel have a difficult job and are required to make maybe sometimes life-and-death decisions, often instantaneously.

They, unlike all the experts in this case, both plaintiff and defendant, haven't had the luxury of spending hundreds of hours working on what happened that evening.

They have not had the luxury of spending three years to be armchair quarterbacks and to examine and analyze with a fine tooth comb every decision that has to be made. They have a job to get done now.

And the law recognizes that a paramedic should be held liable for doing his or her job except under extraordinary circumstances. And that's the reason the standard is not negligence, that standard that, you know, an average citizen is obliged to follow in, say, in a car accident or something.

It's higher, it's a more stringent standard. Willful and wanton conduct here is conduct that, if not an actual intention to harm, it's just a little shy of an actual intent to cause harm.

First, it's the entire course of action that shows utter indifference. Indifference, what? Lack of care, lack of concern. Utter, total, complete, absolute indifference.

Utter indifference is complete indifference for the safety of others that's almost like a conscious desire to harm.

And it's not just an isolated event or decision. It's a complete course of action that says I don't give a damn.

It's like deciding I have – it's hard for me to think of analogies – but, I don't know, driving down Lake Shore Drive with a blindfold during rush hour, or you know, looking backward –

MS.BURDO: Your Honor, objection.

THE COURT: Sustained. I will instruct the jury on the burden of proof at the appropriate time.

MS. BAGDON: All right. The other part of willful and wanton conduct is an entire course of action that shows a conscious disregard for the safety of others.

Now, what does that mean? That would mean that you were conscious that your course of action would likely cause harm to another but you decided to do it anyway.

It's not just, oh, I decided to do X and it didn't turn out well. It's not just –

MS. BURDO: Judge, objection.

THE COURT: Sustained.

MS. BAGDON: It means that you were conscious that your course of action –

THE COURT: Sustained.

MS. BAGDON: I'm just repeating –

THE COURT: I sustained the objection.

MS. BAGDON: Ok.

THE COURT: You may read the instruction –

In rebuttal, plaintiff's counsel argued: "Your Honor's going to instruct you on the law. I'm not going to repeat it. But you do not need to find that the paramedics intended to harm Ms. Bui. That is not the law in this case."

¶ 27 After closing arguments, the jury returned a general verdict in favor of defendants and answered two special interrogatories in their favor as well. The first special interrogatory asked: "Was the conduct of William Steiner on June 14, 2012 willful and wanton?" and a separate question asked the same as to Pearson. The jury answered "No." The second special interrogatory asked: "Was the conduct of William Steiner of June 14, 2012 a proximate cause of Christina Bui's injuries?" and a separate question asked the same as to Pearson. The jury answered "No" too. The court then entered judgment in favor of defendants.

¶ 28 On December 31, 2015, plaintiffs filed a motion for judgment *n.o.v.* and, in the alternative, a new trial. Plaintiffs' request for judgment *n.o.v.* argued that all the evidence, when viewed in favor of defendants, so overwhelmingly demonstrated that their conduct was willful and wanton that the jury's verdict could not stand. In seeking a new trial, plaintiffs argued that defense counsel's closing argument, asserting "that a finding of intentional conduct was necessary in order to impose liability," was improper and misrepresented the law concerning

willful and wanton conduct. Plaintiffs argued defense counsel's reference to an "entire course of action" was inconsistent with the jury instructions. Plaintiffs argued that even if they had failed to properly object during closing, the issue could be reviewed under the plain error doctrine.

¶ 29 On May 4, 2016, the trial court heard arguments on Plaintiffs' motion. On the same day, the trial court issued its ruling denying Plaintiffs' motion. The trial court found sufficient evidence to support the general verdict in favor of defendants. In discussing defendants' closing argument, the court found the comments did not require a new trial. It noted that it had sustained the objections plaintiffs made and gave a curative instruction concerning burden. The court also noted that plaintiffs did not request any further action.

¶ 30 This timely appeal followed.

¶ 31 ANALYSIS

¶ 32 In their first issue, plaintiffs argue the trial court erred in denying their motion for judgment *n.o.v.* because, when viewing the evidence in a light most favorable to the defendants, it is clear that the paramedics engaged in willful and wanton conduct that resulted in the injuries sustained by Bui. Defendants argue that we should affirm the judgment under the general verdict/two-issue rule because the jury could have found their actions were not the proximate cause of Bui's injuries or that she was more than 50 percent negligent and therefore barred from recovery. Alternatively, defendants argue that the jury's verdict is supported by the evidence and therefore the trial court did not err in denying the motion.

¶ 33 A directed verdict or judgment *n.o.v.* should be granted only "when all of the evidence, when viewed in an aspect most favorable to the nonmoving party, so overwhelmingly favors the moving party that no contrary verdict based on that evidence could ever stand." *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). A court should not enter a judgment *n.o.v.*

"if there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome." *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992). A *de novo* standard of review applies to the trial court's denial of plaintiffs' motion for judgment *n.o.v. York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006).

¶ 34 We first address the application of the two-issue rule to this case. The two-issue rule will apply " 'when there is a general verdict and more than one theory is presented, the verdict will be upheld if there was sufficient evidence to sustain either theory, and the [moving party], having failed to request special interrogatories, cannot complain." *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 492 (2002), quoting *Witherell v. Weimer*, 118 Ill. 2d 321, 329 (1987). Based on this, "where two or more defense theories are presented to the jury and it returns a verdict for the defense, an appellate claim of error as one defense theory will not result in reversal since the verdict may stand based on another theory." *Robinson v. Boffa*, 402 Ill. App. 3d 401, 407 (2010).

¶ 35 After reviewing the case law, we conclude the two-issue rule does not apply to the facts of this case. While not discussed by either party, the cases cited in the briefs apply the two-issue rule only where a party is challenging a jury instruction. *Robinson v. Boffa,* 402 Ill. App. 3d 401, 406 (2010)(rule applies to errors in jury instructions); *Tabe v. Ausman*, 388 Ill. App. 3d 398, 404-05 (2009); *Strino v. Premier Healthcare Associates*, 365 Ill. App. 3d 895, 904 (2006). Additionally, in all the cases cited by the parties, the reviewing court specifically noted the absence of any special interrogatories. *Lazenby v. Mark's Const., Inc.*, 236 Ill. 2d 83, 101 (2010); *Guy v. Steurer*, 239 Ill. App. 3d 304, 307 (1992). In this case, two special interrogatories were

given and answered by the jury. Given these two distinguishing factors, the two-issue rule does not apply to this case.

¶ 36 Even though the two-issue rule does not apply, the trial court did not err in denying plaintiffs' motion for judgment *n.o.v.* Where there is no inconsistency between the general verdict and the answer to a special interrogatory, the interrogatory becomes of no consequence and the general verdict controls. *Brock v. Winton*, 82 Ill. App. 3d 1010, 1011-12 (1980). In such a situation, this court engages in a standard judgment *n.o.v.* analysis. *Prange v. Wallenburg*, 27 Ill. App. 3d 618, 623 (1975).

¶ 37 In this case the jury was confronted with a classic battle of the experts and after each side presented their case, the jury found in favor of defendants. The plaintiffs presented the testimony of Nagorka, Jubanyik, Phillips, and Ritter, who all testified that various actions taken by Steiner and Pearson were reckless. The defense presented testimony of Koenigsberg, Rodger, and Dugan that defendants did not act recklessly in attending to Bui and their actions were not the proximate cause of her injuries. They also opined that Bui herself was negligent in failing to have an EpiPen and waiting so long to seek medical assistance.

¶ 38 Plaintiffs' argue that their experts all agreed that the main cause of Bui's injury was the failure to ventilate and defendants presented only one expert, Dr. Koenigsberg, to rebut this theory. In ruling on a judgment *n.o.v.* we are not concerned with witness credibility nor may we reweigh the evidence. *Maple v. Gustafson*, 151 Ill. 2d at 453 (1992). Giving the conflicting testimony at trial, we cannot say that all of the evidence, viewed favorably to Steiner and Pearson, so overwhelmingly favors Bui "that no contrary verdict based on that evidence could ever stand." *Pedrick*, 37 Ill. 2d at 510. Hence, we conclude that the trial court did not err in refusing to grant plaintiffs' judgment *n.o.v.*

¶ 39 In their second issue, plaintiffs argue that the trial court abused its discretion in denying their motion for a new trial because defense counsel made prejudicial and improper remarks during closing arguments. Plaintiffs argue that defense counsel purposefully and repeatedly misinformed the jury that a finding of intentional conduct was necessary to impose liability on defendants.[2] Plaintiffs also take issue with defense counsel's analogy of driving blindfolded down Lake Shore Drive and her attempt to define "conscious disregard."

¶ 40 "Although improper argument and attorney misconduct can be the basis for granting a new trial, that determination is left to the sound discretion of the trial court and should not be disturbed on appeal absent an abuse of discretion." *Zuder v. Gibson*, 288 Ill. App. 3d 329, 338 (1997). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *King v. American Food Equipment Co.*, 160 Ill. App. 3d 898, 911 (1987). "In arguing a case to the jury, counsel is allowed broad latitude in drawing reasonable inferences and conclusions from the evidence." *Friedland v. Allis Chalmers Co. of Canada*, 159 Ill. App. 3d 1, 5 (1987). Importantly, "in determining whether there has been an abuse of discretion, we may not substitute our judgment for that of the trial court, or even determine whether the trial court exercised that discretion wisely." *Simmons v. Garces*, 198 Ill. 2d 541, 568 (2002). Where the trial was fair and the evidence sufficient to support the jury's verdict, we will not reverse upon review. *First National Bank of LaGrange v. Glen Oaks Hospital & Medical Center*, 357 Ill. App. 3d 828, 833 (2005).

¶ 41 Initially, we note that plaintiffs raised their first objection after defense counsel made the Lake Shore Drive analogy and then again after the defense attorney tried to explain "conscious disregard." Plaintiffs failed to object to defense counsel's comments attempting to explain willful

[2] The portion of the closing argument at issue is provided in the Background section.

and wanton conduct. "Generally, failure to object to any impropriety in counsel's closing argument results in waiver unless comments are so inflammatory and prejudicial that plaintiff is denied a fair trial." *Jarmon v. Jinks*, 165 Ill. App. 3d 855, 864 (1987); *Vanderhoof v. Berk*, 2015 IL App (1st) 132927, ¶ 94 (failing to make contemporaneous objection during closing argument will result in forfeiture). Plaintiffs' failure to raise a contemporaneous objection concerning the willful and wanton comments results in waiver on appeal.

¶ 42 In an attempt to avoid its waiver, plaintiffs invoke the plain error doctrine. The plain error doctrine may be applied to civil cases (*Palanti v. Dillon Enterprises, Ltd.*, 303 Ill. App. 3d 58, 66 (1999)), but "only where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fail trial and substantially impaired the integrity of the judicial process." *In re Marriage of Saheb*, 377 Ill. App. 3d 615, 627 (2007). While defense counsel did attempt to define willful and wanton, the trial court had instructed the jury that these statements were not evidence and it would instruct them on the law. In rebuttal, the plaintiffs' counsel pointed out that the willful and wanton did not equate to intentional conduct. Finally, plaintiffs do not dispute that the court gave the correct instruction. The unobjected to statements did not deprive plaintiffs of a fair trial or impair the integrity of the judicial process and we review only those two statements objected to contemporaneously.

¶ 43 After reviewing defense counsel's closing argument and the transcript from the posttrial hearing, we find no abuse of discretion in the trial court's denial of plaintiffs' motion for a new trial. The record discloses that prior to both opening and closing statements, the trial court instructed the jury that the statements being made by the attorneys were not evidence and he would instruct them on the law. After plaintiff objected to defense counsel's Lake Shore Drive analogy, the trial court sustained the objection and instructed the jury that it would instruct them

on the burden of proof at the appropriate time. Plaintiffs did not request the court take any further action such as instructing the jury to disregard the remark or provide any additional curative instruction. When the trial court sustained the second objection, plaintiffs did not request any further action from the trial court. After this second objection, the court sustained two more comments made by defense counsel even though no objection was lodged. Plaintiffs did not request any further relief at that time.

¶ 44 The record further indicates that in rebuttal argument, plaintiffs' counsel pointed out that the judge would instruct them on the law and that they did not need to find defendants intended to intentionally harm Bui. Plaintiffs also do not dispute that willful and wanton jury instruction given by the trial court correctly stated the law. Finally, we find persuasive that at the hearing on plaintiffs' posttrial motion, the trial court reviewed the entirety of defendants' closing statement and, while, agreeing defense counsel's comments were inappropriate, did not believe they warranted a new trial. The court specifically commented that closing arguments were almost five hours long, and, after both parties finished, the jury was instructed on the correct law prior to commencing deliberations. The trial court concluded its posttrial analysis by again noting that plaintiffs requested no further relief at that time. In view of this record, we find no abuse of discretion in the trial court's reasoning and affirm the denial of plaintiffs' motion for a new trial.

¶ 45 CONCLUSION

¶ 46 For the reasons stated, we affirm the judgment of the trial court.

¶ 47 Affirmed.