2019 IL App (1st) 180790-U

No. 1-18-0790

Fourth Division
March 29, 2019



IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| JANE DOE,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>GERALD GADDY and THE BOARD OF EDUCATION OF THE CITY OF CHICAGO,<br><br>Defendants<br><br>(The Board of Education of the City of Chicago, Defendant-Appellee). | ) | Appeal from the Circuit Court of Cook County.<br><br>No. 14 L 10388<br><br>The Honorable Alexander P. White, Judge Presiding. |

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice McBride and Justice Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the defendant was jointly and severally liable for the entire judgment but paid only 70% of the judgment, a portion of the judgment remained unsatisfied and, consequently, the defendant's motion to quash plaintiff's citations to discover assets should not have been granted.

¶ 2 The instant appeal arises from a supplemental proceeding to enforce a money judgment awarded to plaintiff Jane Doe following a jury trial in which defendant Gerald Gaddy was

found liable for sexual battery and defendant Board of Education of the City of Chicago (Board) was found liable for willful and wanton conduct in hiring and supervising him. The jury awarded plaintiff damages in the amount of $515,000 plus costs, and the trial court entered judgment on the verdict. The jury also allocated fault between the defendants, finding the Board 70% at fault and Gaddy 30% at fault. The Board paid plaintiff $362,628.45, which represented 70% of the damages award. Plaintiff filed a citation to discover assets, claiming that the Board was responsible for the remaining 30% of the damages award, as well as for paying postjudgment interest. The Board objected, arguing that it was not jointly and severally liable for the entirety of the damages award, and the judge presiding over the citation proceeding agreed, quashing the citations. Plaintiff appeals and, for the reasons that follow, we reverse.[1]

¶ 3 BACKGROUND

¶ 4 The underlying complaint, trial, and judgment arising from the jury's verdict are not at issue on appeal; neither party appealed the original judgment, and neither party makes arguments concerning that judgment's validity. The only question before us concerns whether the verdict and judgment were based on joint and several liability. Accordingly, we relate the facts concerning the underlying trial proceedings only for context and where relevant to the issues presently before this court.

¶ 5 Plaintiff filed a complaint against Gaddy and the Board, alleging that, while she was a high-school student, Gaddy, her track and field coach, sexually abused plaintiff on over 40 occasions, all of which occurred on school property and with the knowledge of other coaches and students at the school. The complaint raised numerous causes of action against Gaddy

[1] We note that plaintiff included a request for sanctions in her reply brief, but that request was stricken by this court on March 19, 2019.

and the Board, and proceeded to trial on one count against Gaddy for sexual battery and one count against the Board for willful and wanton conduct in the hiring and supervision of Gaddy.

¶ 6 After the trial, on October 13, 2017, the jury returned "verdict form A." As it is relevant to the instant appeal, we quote the form in full:[2]

"We, the jury, find for JANE DOE and against the following defendant or defendants:

GERALD GADDY Yes _X_ No ____

BOARD OF EDUCATION OF THE CITY OF CHICAGO Yes _X_ No ___

We further find the following:

First: We find that the total amount of damages suffered by JANE DOE as a proximate result of the occurrences in question is $_515,000_, itemized as follows:

The pain and suffering experienced as a result of the injuries: $_200,000_

The loss of a normal life experienced and future loss of a normal life reasonably certain to be experienced in the future: $_0_

The emotional distress experienced and reasonably certain to be experienced in the future: $_300,000_

The present cash value of earnings reasonably certain to be lost in the future: $_0_

The present cash value of the reasonable expenses of psychiatric and psychological care, treatment, and services reasonably certain to be received in the future: $_15,000_

PLAINTIFF'S TOTAL DAMAGES: $_515,000_

[2] All areas that appear underlined were spaces on the form in which the number or mark was handwritten in by the jury.

Second: Assuming that 100% represents the total combined legal responsibility of all persons or entities that proximately caused JANE DOE's injury, we find the percentage of legal responsibility attributable to each as follows:

(a) GERALD GADDY _30_ %

(b) BOARD OF EDUCATION OF THE CITY OF CHICAGO _70_ %

TOTAL 100%

*(Instructions to Jury: If you find that any party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter a zero (0)% as to that party.)*" (Emphasis in original.)

The jury also answered a special interrogatory in the affirmative which asked: "Was the Board of Education of the City of Chicago willful and wanton in its hiring, retention or supervision of Gerald Gaddy?"

¶ 7 On the same day, the trial court entered judgment on the verdict. The order provided, in full:

"This cause coming forth on the jury's verdict at trial, IT IS ORDERED that judgment on the verdict is hereby entered against Defendants Gerald Gaddy & the Board of Education of the City of Chicago in the amount of $515,000.00 plus costs."

¶ 8 On November 6, 2017, plaintiff filed a motion to amend the judgment to include $3,040.64 in costs, and on November 13, 2017, the trial court entered an order granting plaintiff's motion and amending the judgment to $518,040.64.

¶ 9 On December 14, 2017, plaintiff issued citations to discover assets against the Board and third party Bank of America, stating that $155,412.19 plus postjudgment interest remained unsatisfied and seeking information about the Board's assets. On January 9, 2018, the Board

filed a motion to quash the citations, claiming that plaintiff was not legally entitled to the remaining unpaid judgment balance from the Board, since the Board had paid plaintiff 70% of the judgment amount, consistent with the allocation of fault found by the jury. The Board claimed that it was not jointly and severally liable for the entirety of the judgment because Gaddy had committed an intentional tort. In response, plaintiff argued that the Board was jointly and severally liable for the entirety of the judgment and that the Board had not paid postjudgment interest on the partial judgment it had paid.

¶ 10 On March 19, 2018, the judge hearing the citation issue[3] granted the Board's motion to quash the citations. The court found that each party had its own reasonable interpretation of the judgment, with plaintiff interpreting it as imposing joint and several liability and the Board interpreting it as imposing only several liability. The court suggested that "in order to determine whose interpretation of the judgment order is correct, asking the underlying trial court who rendered the decision may be necessary." However, in the absence of seeking clarification from the trial court, the citation judge found that the motion to quash should be granted because "[i]t would not be proper to enforce a judgment on a Defendant in which the Plaintiff did not ask [for the] specific damages in the underlying trial they now seek to collect on." The court accordingly held that, "[s]hould the underlying court not clarify their interpretation of the judgment order, the Board's Motion to Quash Plaintiff's Citation to Discover Assets is GRANTED."[4] This appeal follows.

¶ 11 ANALYSIS

¶ 12 On appeal, plaintiff argues that the citation judge erred in quashing the citations to discover assets because the Board was responsible for the entire judgment based on joint and

[3] This judge was not the same judge that presided over the trial.
[4] We note that neither party sought clarification from the trial court.

several liability. Under section 2-1402 of the Code of Civil Procedure (Code), a judgment creditor is entitled to prosecute supplemental proceedings for the purpose of examining the judgment debtor or any other person in order to discover assets or income of the debtor "and of compelling the application of non-exempt assets or income discovered toward the payment of the amount due under the judgment." 735 ILCS 5/2-1402(a) (West 2016). In the case at bar, the issue we are asked to consider is what amount is "due under the judgment." Plaintiff argues that the entirety of the $518,040.64 judgment may be sought from the Board, meaning that $155,412.19 plus postjudgment interest remained due, while the Board argues that it was responsible for paying only 70% of the judgment, which it did. As the citation judge's ruling was not based on an evidentiary hearing and did not involve factual findings, we review it *de novo*. *Kauffman v. Wrenn*, 2015 IL App (2d) 150285, ¶ 15; *PNC Bank, N.A. v. Hoffman*, 2015 IL App (2d) 141172, ¶ 29. *De novo* consideration means we perform the same analysis that a trial judge would perform. *Milevski v. Ingalls Memorial Hospital*, 2018 IL App (1st) 172898, ¶ 26.

¶ 13 "The general rule provides that a judgment is to be construed like other written instruments with the determinative factor being the intention of the court as gathered from all parts of the judgment itself." *Fieldcrest Builders, Inc. v. Antonucci*, 311 Ill. App. 3d 597, 605 (1999). While an unambiguous judgment will be enforced as drafted, an ambiguous judgment should be read in conjunction with the entire record, including the pleadings and issues before the court. *LB Steel, LLC v. Carlo Steel Corp.*, 2018 IL App (1st) 153501, ¶ 28. In the case at bar, neither party argues that the trial court's judgment was ambiguous—they simply disagree as to its interpretation. See *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (2005) (noting that the mere fact that the parties disagree as to the

meaning of a term does not make it ambiguous). It is undisputed that the issue of joint and several liability was not expressly raised during the underlying trial. Thus, we must determine whether silence on the matter results in several liability, as the Board argues, or joint and several liability, as plaintiff claims. We note that we make no comment concerning the conduct of the trial, what the parties could have or should have done, or any of the trial court's rulings. This is not an appeal from the trial court's judgment—it is an appeal from the citation proceeding. We are tasked with answering a single question: does the judgment entered by the trial court impose several liability (in which case the judgment would be satisfied) or joint and several liability (in which case the judgment remains unsatisfied)?[5] The citation judge could only have quashed the citations in the instant case if there was no judgment left to satisfy.[6]

¶ 14 As an initial matter, in the citation proceedings below, both the Board and the citation judge pointed to section 2-1117 of the Code (735 ILCS 5/2-1117 (West 2016)) in considering the issue of joint and several liability. Section 2-1117 codifies the common-law doctrine of joint and several liability in negligence actions, but creates an exception to joint and several liability for defendants who are found less than 25% at fault. 735 ILCS 5/2-1117 (West 2016). Section 2-1117 has no applicability to the instant case by its own terms, since Gaddy was found liable for an intentional tort, not negligence. See 735 ILCS 5/2-1117 (West 2016) (imposing joint and several liability "in actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability"). While both parties agree on appeal that section 2-1117 does not apply, this was an argument made by the Board below and accepted by the citation judge, so we take this

[5] This is, of course, separate from the issue of whether postjudgment interest remains outstanding.

[6] We note that the Board did not raise any other reason to quash the citations during the citation proceedings.

opportunity to make clear that section 2-1117 has no bearing on our analysis of whether the Board was jointly and severally liable in the instant case. We turn, then, to consideration of the common-law doctrine of joint and several liability and its applicability to the instant case.

¶ 15 "The common law doctrine of joint and several liability holds joint tortfeasors responsible for the plaintiff's entire injury, allowing plaintiff to pursue all, some, or one of the tortfeasors responsible for his injury for the full amount of the damages." *Coney v. J.G.L. Industries, Inc.*, 97 Ill. 2d 104, 119-20 (1983). Where defendants, even if sharing no common purpose and acting independently, nevertheless acted concurrently to produce an indivisible injury to the plaintiff, they are considered to be joint tortfeasors. *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 438 (1992). Our supreme court has explained:

> "Such an 'independent concurring tortfeasor' [citation] is not held liable for the entirety of a plaintiff's injury because he or she is responsible for the actions of the other individuals who contribute to the plaintiff's injury. Rather, an independent, concurring tortfeasor is held jointly and severally liable because the plaintiff's injury cannot be divided into separate portions, and because the tortfeasor fulfills the standard elements of tort liability, *i.e.*, his or her tortious conduct was an actual and proximate cause of the plaintiff's injury. [Citations.] The fact that another individual also tortiously contributes to the plaintiff's injury does not alter the independent, concurring tortfeasor's responsibility for the entirety of the injury which he or she actually and proximately caused. [Citations.]" *Woods v. Cole*, 181 Ill. 2d 512, 518-19 (1998).

¶ 16 "The test of jointness is the indivisibility of the injury." *Burke*, 148 Ill. 2d at 438. "Each of two or more persons whose tortious conduct is a legal cause of a single and indivisible

harm to the injured party is subject to liability to the injured party for the entire harm." Restatement (Second) of Torts § 875 (1979); see *Woods*, 181 Ill. 2d at 519 (citing to section 875); *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 429 (1997) (same). However, under section 433A of the Restatement (Second) of Torts:

> "(1) Damages for harm are to be apportioned among two or more causes where
>
> (a) there are distinct harms, or
>
> (b) there is a reasonable basis for determining the contribution of each cause to a single harm.
>
> (2) Damages for any other harm cannot be apportioned among two or more causes." Restatement (Second) of Torts § 433A (1965); see *Burke*, 148 Ill. 2d at 438 (applying section 433A).

¶ 17 The comment to subsection (2) further clarifies:

> "Certain kinds of harm, by their very nature, are normally incapable of any logical, reasonable, or practical division. *** By far the greater number of personal injuries, and of harms to tangible property, are *** normally single and indivisible. Where two or more causes combine to produce such a single result, incapable of division on any logical or reasonable basis, and each is a substantial factor in bringing about the harm, the courts have refused to make an arbitrary apportionment for its own sake, and each of the causes is charged with responsibility for the entire harm. ***
>
> Such entire liability is imposed where some of the causes are innocent, as where a fire set by the defendant is carried by a wind to burn the plaintiff's home; and it is imposed equally where two or more of the causes are culpable." Restatement (Second) of Torts § 433A, comment *i*, at 439-40 (1965).

¶ 18 In the case at bar, the Board argues that because the jury did not make any specific finding that the harm to plaintiff was indivisible, joint and several liability cannot apply. We do not find this argument persuasive. The Board does not provide any authority for the proposition that a specific finding is necessary for the imposition of joint and several liability, nor has our research revealed any support for such a requirement. Instead, the Board merely recites the general proposition of law that an indivisible injury is necessary. However, as noted, "[b]y far the greater number of personal injuries *** are *** normally single and indivisible." Restatement (Second) of Torts § 433A, comment *i*, at 439-40. The Board has provided no reason why plaintiff's case would be different. The Board argues that there was a reasonable basis for determining the contribution of each defendant to the single harm and points to the fact that the jury was able to apportion the percentage of legal responsibility between the defendants. However, the fact that the jury was able to determine the allocation of fault as between the two defendants *does not* mean that the jury found that the Board caused only 70% of the injury and Gaddy caused 30% of the injury. Before being asked to apportion fault, the jury first was required to find that each defendant was liable, which it did. Thus, the jury found that each defendant satisfied the elements of liability independently. It then considered the comparative fault between the two defendants, an entirely different analysis. The Board's attempts to conflate the two concepts, which it does throughout its argument, are unpersuasive.

¶ 19 Additionally, we note that the verdict form speaks of an "injury," not "injuries," when it asks the jury to apportion the percentage of fault between the defendants. Thus, we cannot agree with the Board that a lack of a specific finding of indivisibility means that the judgment imposed only several liability. Instead, based on the longstanding rule, where plaintiff

suffered a single "injury," joint and several liability would apply. We also note that the Board had the ability to seek a separate verdict if it chose to but apparently did not do so. Under section 2-1201 of the Code, "[i]f there are several counts in a complaint, counterclaim or third-party complaint based on different claims upon which separate recoveries might be had, the court shall, on the motion of any party, direct the jury to find a separate verdict upon each claim." 735 ILCS 5/2-1201(c) (West 2016). Thus, if the Board wanted to ensure that only several liability would apply, it had the means to do so.

¶ 20 We also find unpersuasive the Board's contention that the verdict form submitted to the jury was a "several liability verdict form." As quoted more fully above, the verdict form used by the jury first asked the jury to find each defendant either liable or not liable. The verdict form then asked the jury to find the amount of damages suffered by plaintiff as a proximate result of the occurrences in question. Finally, the verdict form asked the jury to find:

> "Assuming that 100% represents the total combined legal responsibility of all persons or entities that proximately caused JANE DOE'S injury, we find the percentage of legal responsibility attributable to each as follows ***."

The Board argues that, since neither defendant asserted a contribution claim, "the only reasonable explanation for the apportionment on the verdict form is several liability." However, that is not entirely accurate.

¶ 21 The verdict form used by the jury was identical to Illinois Pattern Jury Instructions, Civil, No. B45.03A2 (adopted Jan. 2010) (hereinafter IPI Civil No. B45.03A2). Our supreme court has made clear that pattern instructions must be used when applicable unless the trial court determines that they do not accurately state the law. Ill. S. Ct. R. 239 (eff. Apr. 8, 2013); *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 204 (2006). The

section of the pattern instructions concerning multiple parties and pleadings contains three verdict forms for the situation in which there is a single plaintiff and multiple defendants. IPI Civil No. B45.03A2 is one of these three forms, and is entitled "Verdict Form A—Single Plaintiff and Claimed Multiple Tortfeasors—No Comparative Negligence—Verdict for Plaintiff Against Some But Not All Defendants." IPI Civil No. B45.03.A is entitled "Verdict Form A—Single Plaintiff and Claimed Multiple Tortfeasors—Comparative Negligence—Verdict for Plaintiff Against Some But Not All Defendants" and is substantively identical to IPI Civil No. B45.03A2, but contains a line in the apportionment section permitting the jury to find the plaintiff legally responsible and concludes with a "recoverable damages" award that takes into account the plaintiff's percentage of fault; this form is to be used when contributory fault is an issue. See IPI Civil No. B45.03.A, Notes on Use ("This instruction should be used when there is a claim of contributory fault of the plaintiff."). Finally, IPI Civil No. B45.03.B is entitled "Verdict Form B—Single Plaintiff and Multiple Defendants" and is the verdict form to be used where the jury finds in favor of all of the defendants; this verdict form was also provided to the jury in the instant case but was not used given the jury's finding in favor of plaintiff.

¶ 22 The notes on use to IPI Civil No. B45.03A2 provide that "[t]his verdict form should be used when there is no claim of contributory fault of the plaintiff. However, if the plaintiff suffers multiple, separable injuries and not all of the defendants are alleged to have caused each of the separable injuries then a modified verdict form may be necessary. [Citation.]" IPI Civil No. B45.03A2, Notes on Use. The notes on use further instruct:

> "This instruction, or a variation of it, should be used in cases where there is one plaintiff and more than one defendant. If there are multiple counts, the operative

paragraphs may need to be repeated for each count with the count identified, e.g. 'under Count.'

In the event that any party moves for a separate verdict on any count, separate verdicts in addition to this verdict must be submitted. [Citation.]" IPI Civil No. B45.03A2, Notes on Use.

¶ 23 The comment to IPI Civil No. B45.03A2 points to the comment on IPI Civil No. B45.03.A. The comment to IPI Civil No. B45.03.A indicates that "[t]his computational verdict form is to be used in cases involving a single plaintiff and more than one entity which could or might have caused the plaintiff's injury or damage, and where comparative negligence, contribution between defendants or joint and several liability is an issue." IPI Civil No. B45.03.A, Comment. The comment continues, noting that "[f]our verdict forms (IPI B45.03A, B45.03A2, 600.14 and 600.14A) are intended to reflect the jury's findings as to damages and fault, which provide the date for the calculations necessary to the entry of a judgment or judgments." IPI Civil No. B45.03.A, Comment. The comment further instructs:

"If contribution claims are tried simultaneously with the plaintiff's underlying action, this verdict form (in the event of only counterclaims among defendants) or IPI 600.14 (in the event of third-party claims) is to be used as the form of verdict for both the plaintiff's claim and those contribution claims. This verdict form is also to be used in those cases where contribution is not sought but where one or more defendants seek to be held only severally liable.

This form eliminates the need for separate calculations or allocations by the jury for comparative negligence, joint and several liability, and contribution." IPI Civil No. B45.03.A, Comment.

¶ 24 The Board points to the comment that suggests that the verdict form should be used in cases "where contribution is not sought but where one or more defendants seek to be held only severally liable" (IPI Civil No. B45.03.A, Comment), and claims that this bolsters the conclusion that the trial court entered judgment based on several liability. However, this argument has several fatal flaws. First, there is no indication that the Board "sought" to be held severally liable; the entire basis of the instant appeal is that neither party expressly addressed the issue of joint and several liability. Had the Board expressly sought to be held only severally liable, we would not be here today.

¶ 25 Furthermore, the Board's argument completely ignores the fact that several liability is *not* the only situation in which this verdict form is used. The comment expressly states that it is also to be used in cases of joint and several liability. This makes complete sense—in cases of negligence, where section 2-1117 is applicable, a defendant is jointly and severally liable unless his fault is less than 25% of the total fault. 735 ILCS 5/2-1117 (West 2016). This necessarily requires an apportionment of fault. Thus, there is absolutely no basis for the Board's characterization of the verdict form as a "several liability verdict form." Instead, the verdict form used was simply the pattern form that most closely fit the facts of the instant case.[7] As noted at the beginning of our analysis, we make no comment as to whether this was the best form to use or whether another form would have made the issue clearer—we are

[7] Similarly, there is no merit to the Board's claim that there is any significance to instructing the jury that "[t]he rights of the defendant's [*sic*] *** are separate and distinct. Each is entitled to a fair consideration of his own defense and you will decide each defendant's case separately as if it were a separate lawsuit. Each defendant's case must be governed by the instructions applicable to that case." This is simply IPI Civil No. 41.03, which, according to its notes on use, avoids duplicative instructions on behalf of multiple defendants and is used where the relationship between the defendants is not based solely on vicarious liability. IPI Civil No. 41.03, Notes on Use. It is irrelevant to the issue of joint and several liability.

simply analyzing the effect of the particular form the parties actually used. Here, the use of IPI Civil B45.03A2 did not transform the case into one seeking only several liability.

¶ 26 We find the Board's reliance on *Werner v. Nebal*, 377 Ill. App. 3d 447 (2007), in support of this point to be unpersuasive. The Board claims that in that case, "this Court affirmed a trial court's decision not to allow a verdict form like the one used here precisely because it provided for several liability." However, in that case, the proposed jury instruction would have required the jury to apportion the amount of *damages* for which each defendant was responsible, not its *allocation of fault* as between the defendants. See *Werner*, 377 Ill. App. 3d at 453 ("The final step required the jury to indicate a percentage of the damages for which each defendant was responsible."). The trial court refused the proposed instruction, "concluding that joint liability was more appropriate." *Werner*, 377 Ill. App. 3d at 453. The appellate court affirmed, finding that the trial court had not abused its discretion "when it provided the jury with a verdict form which permitted joint and several liability." *Werner*, 377 Ill. App. 3d at 457. Neither the proposed instruction nor the given instruction are quoted in the opinion, making comparison to the verdict form at issue in the instant case impossible,[8] and the court's analysis on the issue is brief. Thus, the case is of limited utility in our analysis. However, we note that joint and several liability is mandated in actions under the Dramshop Act, which was the basis for liability in *Werner* (see *Werner*, 377 Ill. App. 3d at 457), and further note that contribution is not permitted in such actions (see *Hopkins v. Powers*, 113 Ill. 2d 206, 211 (1986)). Thus, to the extent that the pattern verdict form *may* be used in a case seeking several liability, it would have been reasonable for the trial court to

[8] We can say, of course, that one significant difference is that the verdict form at issue in the instant case asked the jury to apportion fault between the defendants and did not ask the jury to apportion damages between them.

have concluded that a different form, with no allocation of any sort, would be more appropriate under the circumstances present in that case.

¶ 27 We also find unpersuasive the Board's claim that joint and several liability was unavailable because Gaddy was an intentional tortfeasor. The Board claims that "[a]s a negligence tortfeasor, the Board cannot be held jointly and severally liable for Gaddy's intentional torts." However, the Board provides no authority for this proposition. It is well settled that a reviewing court is under no obligation to consider an argument where a party has failed to provide any legal authority for it. *Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 45; Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (arguments in appellate brief must be supported by citation to legal authority). Instead, the Board looks to the areas of contribution and comparative fault, asserting that both "forbid the imposition of financial responsibility on one party for the intentional tort of another party." However, the cases the Board cites in support of this argument do not stand for this proposition—they concern whether an *intentional tortfeasor* may take advantage of the right of contribution against a joint tortfeasor, not whether a nonintentional tortfeasor has the right of contribution *against* the intentional tortfeasor. In *Gerill Corp. v. Jack L. Hargrove Builders, Inc.*, 128 Ill. 2d 179, 206 (1989), our supreme court found that "intentional tortfeasors are not entitled to contribution." See also *Rusher v. Smith*, 70 Ill. App. 3d 889 (1979) (in an action founded on an intentional tort, freedom from contributory negligence is not a defense); *Chicago Railways Co. v. R.F. Conway Co.*, 219 Ill. App. 220, 223 (1920). However, the Board is not an intentional tortfeasor—it is a willful and wanton tortfeasor. Our supreme court has found that a willful and wanton tortfeasor may seek contribution against a joint tortfeasor, so long as the willful and wanton tortfeasor's actions were reckless and not intentional. *Ziarko v. Soo*

*Line Railroad*, 161 Ill. 2d 267, 279 (1994). The Board has provided no authority suggesting that this ability to seek contribution is limited to negligent tortfeasors, and we see no reason why such a limitation should be applied. Accordingly, the Board's argument that there can be no joint and several liability with an intentional tortfeasor is not persuasive.

¶ 28 Finally, the Board makes several arguments based on equity. First, the Board argues that it would be prejudiced by an imposition of joint and several liability because "[t]he Board's argument and presentation of evidence at trial may well have been quite different in the absence of a several liability verdict form." As we have noted, there was no "several liability verdict form." There was simply the pattern verdict form. There *could have been* a "several liability verdict form" if the Board had requested separate verdicts, but there was not. Moreover, as plaintiff points out, the decision as to what jury instructions and verdict forms to give was made after the parties had finished presenting their cases, meaning that the Board's presentation of evidence at trial would in no way have been affected by the form used.

¶ 29 Additionally, the Board claims that interpreting the judgment as imposing joint and several liability would result in the Board's liability for Gaddy's intentional sexual batteries. This is not the case. There is a distinction between the obligation between joint tortfeasors and the obligation of the tortfeasors to the plaintiff. *Burke*, 148 Ill. 2d at 453. As our supreme court has explained:

> "[A]n 'independent concurring tortfeasor' [citation] is not held liable for the entirety of a plaintiff's injury because he or she is responsible for the actions of the other individuals who contribute to the plaintiff's injury. Rather, an independent, concurring tortfeasor is held jointly and severally liable because the plaintiff's injury

> cannot be divided into separate portions, and because the tortfeasor fulfills the standard elements of tort liability, *i.e.*, his or her tortious conduct was an actual and proximate cause of the plaintiff's injury. [Citations.] The fact that another individual also tortiously contributes to the plaintiff's injury does not alter the independent, concurring tortfeasor's responsibility for the entirety of the injury which he or she actually and proximately caused. [Citations.]" *Woods*, 181 Ill. 2d at 518-19.

Thus, even though, as between tortfeasors, the jury determined that the Board is 70% responsible and Gaddy is 30% responsible, with respect to plaintiff, each defendant is entirely responsible for her damages. Requiring the Board to pay the entire judgment is not making the Board liable for Gaddy's intentional sexual batteries—it is making the Board liable for its own willful and wanton conduct. Accordingly, because the Board has undisputedly not satisfied the entire judgment, the citation judge erred in granting its motion to quash the citations.

¶ 30 As a final matter, plaintiff argued that the motion to quash was improperly granted because the Board did not pay postjudgment interest on the judgment. The citation judge's opinion was silent on the issue of postjudgment interest, and the Board on appeal only addresses postjudgment interest on the 30% of the judgment that remains outstanding; the Board does not dispute that it has not paid postjudgment interest on the 70% of the judgment that it has paid.[9] Under section 2-1303 of the Code, a judgment creditor is entitled to postjudgment interest; the rate of the interest differs depending on whether the judgment

[9] We note that the Board suggests that plaintiff forfeited her argument that she was entitled to postjudgment interest on the 30% of the judgment that remains outstanding. However, that was not plaintiff's argument on appeal. Plaintiff argued that she had received *no* postjudgment interest at all, including on the 70% of the judgment that the Board had paid. Thus, even if we had agreed with the Board concerning the issue of several liability, we would agree with plaintiff that the citations should not have been quashed due to the outstanding postjudgment interest.

debtor is a governmental or nongovernmental entity. 735 ILCS 5/2-1303 (West 2016). Accordingly, on remand, the citation judge must determine the applicable rate and amount of postjudgment interest owed to plaintiff.

¶ 31 CONCLUSION

¶ 32 The judgment entered by the trial court in the underlying lawsuit imposed joint and several liability against both defendants. Since the Board paid only 70% of the judgment, 30% of the judgment, plus postjudgment interest on the entire judgment, remains outstanding. Accordingly, there was no basis for the citation court to quash plaintiff's citations to discover assets.

¶ 33 Reversed and remanded with instructions.