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2014 IL App (3d) 130282-U

Order filed March 28, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

EDITH LYNN SMITH,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellant,	)	La Salle County, Illinois,
	)	
v.	)	Appeal No. 3-13-0282
	)	Circuit No. 09-L-141
HARSHAVADAN VYAS, M.D.,	)	
	)	The Honorable
Defendant-Appellee.	)	Eugene P. Daugherty,
	)	Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The court did not abuse its discretion by finding defendant's statements did not constitute judicial admissions and properly denied plaintiff's motion for judgment notwithstanding the verdict. Plaintiff waived any issue regarding the jury instructions. The court's denial of plaintiff's motion for new trial was not against the manifest weight of the evidence.
- ¶ 2 Defendant Dr. Harshavadan Vyas performed outpatient surgery on plaintiff Edith Lynn Smith, on July 19, 2007, to remove a polyp on her uterine wall and complications, resulting from the outpatient procedures, required plaintiff to have additional surgery the following day. During

the second surgery, the surgeon discovered peritonitis from a perforation to the uterus and bowel, and the original polyp had not been removed during the outpatient surgery performed by Dr. Vyas. Plaintiff filed a medical malpractice complaint alleging Dr. Vyas breached his standard of care and committed professional negligence during the first outpatient procedures on July 19, 2007, and, as a proximate result of Dr. Vyas' negligence, plaintiff suffered additional damages.

¶ 3 The court conducted a jury trial and the jury found in favor of Dr. Vyas and against plaintiff. Plaintiff filed a posttrial motion asking for a judgment notwithstanding the verdict (judgment *n.ov.*) claiming Dr. Vyas made judicial admissions during the jury trial that resolved the negligence and liability issues, as a matter of law, therefore, the judge should have found liability existed and the jury should only have decided the issue of damages to be awarded to plaintiff. In the alternative, plaintiff's posttrial motion requested a new trial on all issues claiming statements in the defense's closing arguments were based on facts not in evidence and were so prejudicial as to deprive plaintiff of a fair trial. The trial court denied both issues raised in plaintiff's posttrial motion. We affirm.

¶ 4 BACKGROUND

¶ 5 On July 19, 2007, Dr. Vyas admitted plaintiff into the Community Hospital of Ottawa for an outpatient hysteroscopy, a procedure involving the removal of an endometrial polyp, and a fractional dilatation and curettage (D & C). The next day, Dr. Vyas received a pathology report indicating the tissue samples recovered from plaintiff's surgery included bowel tissue. Dr. Vyas immediately contacted plaintiff and instructed her to return to the hospital where Dr. Goliath, assisted by Dr. Vyas, performed an exploratory laparotomy that revealed both peritonitis and a rectal tear.

¶ 6 On July 15, 2009, plaintiff filed a medical malpractice complaint against Dr. Vyas. The

complaint alleged, on July 19, 2007, Dr. Vyas was negligent in one or more of the following respects in that he:

“a. Failed to properly differentiate the wall of the rectum from the endometrial polyp; and

b. Failed to perform a hysteroscopy after obtaining the biopsy and before conclusion of the surgery.”

¶ 7 The complaint further alleged Dr. Vyas negligently discharged plaintiff from outpatient surgery without discovering he removed a portion of plaintiff’s rectum rather than removing the polyp in her uterus. Plaintiff alleged she suffered peritonitis as a complication of the damage caused to her rectum. Further, she alleged she had to undergo additional surgical procedures to repair her damaged rectum and bowel. Finally, the complaint alleged that, as a proximate result of Dr. Vyas’ negligence, she suffered current and future pain and suffering and medical expenses, and had experienced and will continue to experience disability and/or loss of normal life. The court scheduled the case for a jury trial on November 5, 2012.

¶ 8 On November 5, 2012, the court began the jury trial on plaintiff’s complaint against Dr. Vyas. Both plaintiff and the defense called Dr. Vyas as a witness. Dr. Vyas testified that he ordered an ultrasound for plaintiff based on symptoms of excessive bleeding, on June 28, 2007, which revealed plaintiff had a polyp in her uterus. On July 19, 2007, Dr. Vyas performed an outpatient polypectomy on plaintiff to remove the polyp and performed a D & C surgery.

¶ 9 Dr. Vyas described known complications for this type of surgery which included perforation of the uterus and, if perforation of the uterus occurs, injury to nearby organs. Dr. Vyas said that the large colon and bowel were immediately adjacent to the location where plaintiff’s uterus was perforated. Dr. Vyas testified that perforation of the uterus was a known

complication of a polypectomy and D & C, and perforation of the bowel was also a known, but rare, complication of those procedures.

¶ 10 Dr. Vyas testified he took all of the steps required to complete the procedures safely, and he complied with the standard of care of a reasonably careful gynecologist in performing the polypectomy and D & C. He said he initially took pictures of the inside of plaintiff's uterus with the hysteroscope during the procedure performed on July 19, 2007, and Dr. Vyas observed a yellowish, "grape-like polyp in the fundus of the uterus." Dr. Vyas said the uterine cavity was expanded with fluid when he looked through the hysteroscope and he could clearly see the inside of the uterus. At that point in plaintiff's procedure, pursuant to standard practices, Dr. Vyas removed the hysteroscope and proceeded to remove the polyp with a forceps, which is a "blind" procedure. Dr. Vyas said the tissue he removed during plaintiff's procedure looked "just like the polyp" he observed, so there was no reason to redo the hysteroscopy after he removed the polyp. After the procedure, nothing seemed abnormal while in the recovery room, so plaintiff was discharged from the hospital.

¶ 11 At one point in his direct testimony, the following testimony was elicited:

"DR. VYAS' ATTORNEY: Did you comply with the applicable standard of care for a reasonably careful gynecologist in the manner in which you performed the D & C?

DR. VYAS: Yes, sir.

DR. VYAS' ATTORNEY: Did you comply with the standard of care in your performance of the D & C in employing the methods that are used to that as safely as possible and avoid injury?

DR. VYAS: Yes, sir.

DR. VYAS' ATTORNEY: Was the injury that we now know [plaintiff] suffered

the result of any negligence – professional negligence or any deviation from the standard of care by you in performing the D & C and polypectomy?

DR. VYAS: No, sir.”

Later, during plaintiff’s cross examination of Dr. Vyas, the following testimony occurred:

“PLAINTIFF’S ATTORNEY: [O]n July 19, 2007, did you provide your patient [plaintiff] the treatment of a reasonably well-qualified gynecologist when you removed a portion of her rectum? Yes or no?

DR. VYAS: No.”

¶ 12 Dr. Vyas stated, prior to surgery, he did not inform plaintiff that a potential risk of her surgery was a perforation of the bowel because it was not a common complication. Dr. Vyas agreed further surgery would not have been necessary if plaintiff’s bowel had not been perforated. Dr. Vyas also said that the occurrence of an injury or complication resulting from a procedure does not necessarily indicate professional negligence.

¶ 13 The jury then viewed Dr. Goliath’s evidence deposition. Dr. Goliath described the surgery and procedures he performed on July 20, 2007, to correct plaintiff’s perforated bowel and its complications.

¶ 14 Next, Dr. Michael David Benson, an obstetrician and gynecologist, testified as plaintiff’s expert witness. In preparation for his testimony, Dr. Benson, reviewed plaintiff’s medical records of the procedures performed by Dr. Vyas and Dr. Goliath on July 19 and 20, 2007. Dr. Benson said a perforation of the uterus is a known complication of plaintiff’s procedures, and also stated a perforation of the bowel is a much less common, but known, complication.

¶ 15 Dr. Benson testified plaintiff’s polyp was a finger-like shape and should have been a pinkish red color, and Dr. Vyas removed a grape-like shaped ball of fat attached to the rectum,

which is usually a yellowish color, that caused a tear in the outer wall of plaintiff's rectum. Dr. Benson felt the perforation in plaintiff's uterus occurred when Dr. Vyas initially dilated plaintiff's cervix with the hysteroscope, because that is usually the time when a perforation of the uterus occurs during this surgery. In Dr. Benson's opinion, the perforation of the uterus was not a breach of Dr. Vyas' standard of care, but the tear in the bowel was a deviation from Dr. Vyas' required standard of care in this instance.

¶ 16 Dr. Benson opined Dr. Vyas breached his standard of care by not clearly identifying the tissue he removed during plaintiff's first surgery on July 19, 2007. Dr. Benson said Dr. Vyas should have looked at the removed tissue before he sent it to the pathology lab and should have realized it was not the polyp. According to Dr. Benson, Dr. Vyas should have been able to determine the tissue was fatty tissue which would generally mean there was a bowel injury. Dr. Benson said Dr. Vyas also should have looked inside the uterus, again with a hysteroscope, after removing the tissue to make sure he actually removed the polyp. Additionally, Dr. Benson opined that Dr. Vyas' deviation from his standard of care was the proximate cause of plaintiff's further surgery and injuries.

¶ 17 Dr. Benson testified the tissue Dr. Vyas removed during plaintiff's surgery was sent to the pathology lab immediately after the surgery. Plaintiff's pathology report indicated that the lab notified Dr. Vyas about suspicious findings of tissue fragments from outside the uterus at approximately 12:30 p.m. on July 19, 2007. According to the reports, Dr. Vyas did not contact plaintiff until the next morning, July 20, 2007, waiting until after the lab completed the microscopic analysis of the tissue which required overnight processing.

¶ 18 Dr. Benson testified, once the uterine wall becomes perforated, fluid pressure to expand the uterus cannot be maintained so the view through the hysteroscope would be narrower and

less clear. He said the surgeon usually recognizes this right away, through the hysteroscope, and usually stops the procedure immediately and sends the patient home with antibiotics for few days.

¶ 19 During cross examination, Dr. Benson agreed that, when complications occur during surgery, it does not automatically indicate a deviation from the standard of care, and complications can occur with or without negligence. Dr. Benson stated there are also some additional problems in performing a D & C on a “morbidly obese” patient, such as plaintiff. Dr. Benson concurred that a D & C procedure and polypectomy are blind procedures, which means the doctor cannot see the cutting tips of the instruments inside the patient’s body during the surgery, and the doctor must rely on the sense of feel during a blind procedure.

¶ 20 Dr. Vyas called Dr. Henry Dominicis, an obstetrician and gynecologist, as his expert witness. Dr. Dominicis testified he reviewed the medical records, materials, and depositions regarding plaintiff’s surgeries on July 19 and 20, 2007, and opined Dr. Vyas met the required standard of care in performing plaintiff’s D & C and polypectomy. According to Dr. Dominicis, a recognized complication of these procedures is that the uterus could be perforated and the nearby bowel could be injured. The fact that a complication occurs does not mean the doctor deviated from his standard of care or committed professional negligence.

¶ 21 In Dr. Dominicis’ opinion, the polyp forceps rather than the hysteroscope caused the perforation of plaintiff’s uterus, penetrating the back wall of the uterus and reaching the adjacent bowel. Dr. Dominicis stated the “feel” of the uterus wall and the surface of the outside rectum are “very similar.” Dr. Dominicis testified that, although a polyp is pinkish in color when it is live tissue attached to the organ, once a polyp is removed, it loses its pinkish color and looks very close in appearance to fatty tissue. Dr. Dominicis said the tissue Dr. Vyas removed from

plaintiff was similar to the size of the polyp shown in the ultrasound. Dr. Dominicis testified the pathology report of plaintiff's tissue, recovered from the D & C scrapings and polypectomy, showed both endometrial tissue from inside the uterus, as well as tissue from the bowel. During this type of procedure, the tissue samples are covered in lots of blood, which is not cleaned off until it is sent to the pathology lab. Therefore, it would have been difficult for Dr. Vyas to distinguish the specific origin of the tissue scrapings prior to sending them to the lab.

¶ 22 Dr. Dominicis testified that injury to adjacent organs is a recognized complication of plaintiff's procedure, in addition to perforation of the uterus. Additionally, Dr. Dominicis stated a surgeon should not routinely perform a second hysteroscopy, after the procedure is completed, because it "disrupts" the uterus further and the bleeding makes it difficult to view the area. Dr. Dominicis stated that, according to the plaintiff's medical records from July 19, 2007, there were no indications that the procedure did not get completed as planned, so there was no need for a second hysteroscope. The defense then rested its case in chief.

¶ 23 After the defense rested, plaintiff moved for a directed verdict at the close of all of the evidence.<sup>1</sup> The trial court denied that motion and, after closing arguments, the court tendered the case to the jury for deliberation. The jury returned a unanimous verdict in favor of Dr. Vyas. Plaintiff filed a posttrial motion on January 18, 2013, asking the court to enter a judgment notwithstanding the verdict in favor of Dr. Vyas on the issues of breach of standard of care and proximate cause. Plaintiff requested the court to grant plaintiff a new trial solely on the issue of

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<sup>1</sup> The record does not contain a transcript of the court's ruling on plaintiff's motion for directed verdict at the close of all of the evidence. The record sheet for November 8, 2012, provides that, after the defense rested, plaintiff raised a motion for directed verdict, which the court denied.



damages. In the alternative, plaintiff asked the court to grant her a new trial on all issues, including liability and damages.

¶ 24 First, in support of her request for the entry of a judgment *n.o.v.* against Dr. Vyas on the issues of breach of standard of care and proximate cause, plaintiff claimed Dr. Vyas unequivocally testified, during trial, that he did not provide plaintiff with “the treatment of a reasonable well-qualified gynecologist” when he removed a portion of plaintiff’s rectum. Therefore, plaintiff argued, based on Dr. Vyas’ judicial admission, the judge should set aside the jury’s determination and enter judgment in favor of plaintiff and find Dr. Vyas breached his standard of care, constituting professional negligence resulting in liability for plaintiff’s injuries, and remand the case for a jury solely to decide the issue of damages.

¶ 25 In the alternative, plaintiff’s posttrial motion claimed defense counsel’s improper and prejudicial closing arguments appealed to the passion of the jury and caused the jury to find in favor of Dr. Vyas in lieu of his own admissions. Consequently, plaintiff requested a new trial on all issues.

¶ 26 In ruling on the posttrial motion, the trial judge noted he previously determined Dr. Vyas did not make an unequivocal judicial admission during his testimony when ruling on plaintiff’s motion for a directed verdict at the close of all of the evidence. Further, in ruling on the posttrial motion, the judge noted he evaluated the entirety of Dr. Vyas’ testimony to determine whether the doctor made judicial admissions, rather than evaluating only some of the limited questions put forth by plaintiff. Additionally, in order to qualify as a judicial admission, the court stated “it ha[d] to be an admission of a concrete fact as distinguished from a matter of opinion, estimate or appearance or inference.” The court found, although “the doctor certainly testified as to the question of whether or not he rendered the plaintiff in this case the care of a reasonably qualified

gynecologist and he said no,” he also testified, in answer to his own attorney’s questions that he complied with the appropriate standard of care. The trial court found Dr. Vyas was rendering his own opinion about plaintiff’s procedure and did not make a statement about “a concrete fact that was uniquely in Dr. Vyas’ knowledge.” Accordingly, the court found the doctor’s testimony did not constitute a judicial admission or warrant the entry of a judgment *n.o.v.* as requested in plaintiff’s posttrial motion.

¶ 27 Regarding plaintiff’s claims for a new trial based on improper closing arguments by the defense, the court noted that plaintiff objected to only portions of the defense’s closing argument during trial but did not object to many of the closing remarks now challenged by plaintiff as improper in her posttrial motion. The court stated that the “thrust of plaintiff’s argument in seeking the new trial in this case is that the errors on a cumulative basis amounted to plain error which deprived the plaintiff in this case of a fair trial.” The court denied plaintiff’s request for a new trial finding the defense arguments were supported by the evidence and any errors by the defense were not so egregious as to deny plaintiff a fair trial. Plaintiff filed a timely appeal.

¶ 28 ANALYSIS

¶ 29 On appeal, plaintiff contends the trial court erred by denying her posttrial motion requesting a judgment *n.o.v.* or a new trial. First, plaintiff argues Dr. Vyas made a judicial admission, that warrants the entry of a judgment *n.o.v.* Next, plaintiff argues there was an “irreconcilable conflict between the instructions [the jury] was sworn to follow and the testimony it was asked to consider.” Additionally, plaintiff argues defense counsel improperly personally attacked plaintiff’s attorney, during closing arguments, by accusing plaintiff’s attorney of “confusing” and “setting up” Dr. Vyas during the testimony, and by “vouch[ing] for” Dr. Vyas’ and other witnesses’ credibility.

¶ 30 Dr. Vyas contends the trial court did not abuse its discretion by deciding Dr. Vyas' testimony did not constitute a judicial admission and properly denied plaintiff's request for judgment *n.o.v.* Dr. Vyas argues plaintiff waived or forfeited all other issues related to her motion for new trial which were not raised in her posttrial motion relating to jury instructions, trial testimony, closing arguments, and whether the court should have decided, as a matter of law, that Dr. Vyas deviated from the standard of care based on his judicial admission.

¶ 31 It is well-established that the "[f]ailure to specifically allege error in the post-trial motion waives the issue for review." *Graves v. North Shore Gas Co.*, 98 Ill. App. 3d 964, 969-70 (1981) (citing *Wilson v. Clark* (1981), 84 Ill. 2d 186, 189-190 (1981)). Therefore, on review, we are limited to address only the preserved issues raised in plaintiff's posttrial motion.

¶ 32 I. Judgment *n.o.v.* and Dr. Vyas' Judicial Admissions

¶ 33 Initially, we note plaintiff's posttrial motion requested the trial court to enter a judgment *n.o.v.* on the issues of the breach of the standard of care and liability. Plaintiff claims the trial court should have determined, as a matter of law, that Dr. Vyas' admissions established the breach of his standard of care and liability in this case, and the jury should have only been left to determine damages. We review a trial court's ruling on a judicial admission for an abuse of discretion. *Shelton v. OSF Saint Francis Medical Center*, 2013 IL App (3d) 120628, ¶ 23. A motion for judgment *n.o.v.* should be granted only when " 'all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors [a] movant that no contrary verdict based on that evidence could ever stand.' " *Lawlor v. North American Corporation of Illinois*, 2012 IL 112530, ¶ 37 (citing *York v Rush-Prebyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006) (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967))). We review a trial court's ruling on a motion for judgment *n.o.v.* by applying a *de novo*

standard of review. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 100 (2010); *York*, 222 Ill. 2d at 178. Therefore, we must review the trial court's decision regarding Dr. Vyas' alleged judicial admissions for an abuse of discretion, and then apply the appropriate standards of review regarding plaintiff's motion for judgment *n.o.v.* or new trial.

¶ 34 It is well-established that a party may, by his own testimony, “conclusively bar his claim or his defense,” but whether a party's testimony defeats his own claim depends upon an evaluation of all of his testimony, and not just a portion of it. *McCormack v. Haan*, 20 Ill. 2d 75, 78 (1960). This issue also depends on an appraisal of the party's testimony in light of the testimony of the other witnesses. *Id.* Before a statement can be deemed a judicial admission, it must be given a meaning consistent with the context in which it was found and must be decided under the circumstances on a case by case basis. *Shelton*, 2013 IL App (3d) 120628, ¶ 24.

¶ 35 Our supreme court has held judicial admissions must be “deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge.” *J.P. Morgan Chase Bank, N. A., v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475 (2010) (quoting *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998)). The *J.P. Morgan* court noted, “A party is not bound by admissions regarding conclusions of law because the courts determine the legal effect of the facts adduced.” *Id.*

¶ 36 Here, plaintiff relied on the following question and answer to support her position that Dr. Vyas made a binding judicial admission that should supersede and outweigh all contradictory testimony as a matter of law:

“PLAINTIFF’S ATTORNEY: [O]n July 19, 2007, did you provide your patient [plaintiff] the treatment of a reasonably well-qualified gynecologist when you removed a portion of her rectum? Yes or no?”

DR. VYAS: No.”

¶ 37 In the instant case, the trial court found that Dr. Vyas’ purported admission, in the context of all of his testimony, did not constitute “deliberate, clear, unequivocal statements” about a concrete fact within his knowledge, specifically whether Dr. Vyas breached his standard of care and was professionally negligent. We agree. Throughout his testimony, Dr. Vyas repeatedly said he complied with his standard of care as a gynecologist performing a polypectomy and D & C on plaintiff.

¶ 38 Moreover, plaintiff’s expert witness, Dr. Benson, testified that a perforation of the bowel was a known complication of the procedure Dr. Vyas performed on plaintiff on July 19, 2007. Although Dr. Benson stated it was his expert opinion that Dr. Vyas deviated from his standard of care when he perforated or tore plaintiff’s rectum, other experts testified Dr. Vyas did not deviate from the standard of care.

¶ 39 For the foregoing reasons, we conclude the trial court did not abuse its discretion in finding that Dr. Vyas’ testimony did not constitute a judicial admission regarding the breach of his standard of care or professional negligence. Consequently, since the judicial admission argument was the basis for plaintiff’s motion for judgment *n.o.v.*, and based upon our *de novo* review of the evidence, we hold the trial court properly denied plaintiff’s motion for judgment *n.o.v.*

## II. Irreconcilable Differences Between Jury Instructions and Testimony

¶ 40 Plaintiff also argues there was an “irreconcilable conflict between the instructions [the jury] was sworn to follow and the testimony it was asked to consider.” The defense contends plaintiff waived this issue for review since plaintiff did not object to the jury instructions at trial and did not specifically allege this error in her posttrial motion. See *Graves*, 98 Ill. App. 3d at

969. After a careful review of the record, and the posttrial motion, we agree this issue was not properly preserved for review and has been waived on appeal.

¶ 41 III. Motion for New Trial

¶ 42 In the alternative, plaintiff's posttrial motion also asked the court to grant her a new trial on all issues based on defense counsel's improper closing arguments. In contrast to a judgment *n.o.v.*, the trial court will overturn the verdict and order a new trial only if the verdict is contrary to the manifest weight of the evidence. *Lawlor*, 2012 IL 112530, ¶ 38 (citing *Maple v. Gustafson*, 151 Ill. 2d 445, 454-55 (1992)). A verdict is against the manifest weight of the evidence only where the opposite result is clearly evident or where the jury's findings are unreasonable, arbitrary and not based upon any of the evidence, and this court will not reverse the trial court's ruling on a motion for a new trial unless it is affirmatively shown that the trial court abused its discretion. *Id.*

¶ 43 However, in the case at bar, we are again limited to issues preserved for appeal by plaintiff's objections raised during the trial and identified in a posttrial motion. On appeal, plaintiff argues the defense's closing argument was sufficiently prejudicial to allow her a new trial because the closing argument personally attacked plaintiff's counsel and enabled defense counsel to "vouch" for his own client's credibility rather than focusing on the facts in evidence. Dr. Vyas claims plaintiff waived this issue on appeal because she did not object to the specific statements, now under scrutiny, during the actual closing arguments.

¶ 44 Although plaintiff did not specifically allege "plain error" in her posttrial motion, she essentially argued the elements of plain error in this posttrial motion, and cited to similar authority. The court stated, in ruling on plaintiff's posttrial motion and argument, "Now, in this case there were some objections during the closing argument that were made and some of the

objections were sustained and some were overruled, but the primary thrust of the plaintiff's argument in seeking the new trial in this case is that the errors on a cumulative basis amounted to plain error which deprived the plaintiff in this case of a fair trial." However, the court found the defense arguments were properly supported by the evidence and, if there were any errors by the defense during closing arguments, they were not so egregious as to deny plaintiff a fair trial.

¶ 45 It is well-established that a statement made in closing argument regarding facts not in evidence is improper and constitutes reversible error if it was so prejudicial as to deprive a party of a fair trial. *Watkins v. American Service Ins. Co.* 260 Ill. App. 3d 1054, 1067 (1994). Our supreme court has held that "[f]ailure to object to allegedly prejudicial remarks during closing argument generally waives the issue for review." *Simmons v. University of Chicago Hospitals and Clinics*, 162 Ill. 2d 1, 12 (1994) (citing *Belfield v. Coop*, 8 Ill. 2d 293, 311-12 (1956)).

However, the supreme court further explained the following exception to this rule:

"If prejudicial arguments are made without objection of counsel or interference of the trial court to the extent that the parties litigant cannot receive a fair trial and the judicial process stand without deterioration, then upon review this court may consider such assignments of error, even though no objection was made and no ruling made or preserved thereon." *Id.* (quoting *Belfield*, 8 Ill. 2d at 313).

The *Simmons* court noted that this exception had been applied in cases involving "blatant mischaracterizations of fact, character assassination, or base appeals to emotion and prejudice." *Simmons*, 162 Ill. 2d at 12 (quoting *Gillespie v. Chrysler Motors Corp.*, 135 Ill. 2d 363, 377 (1990)).

¶ 46 In the instant case, on appeal, plaintiff argues the defense's closing arguments included facts not in evidence which denied plaintiff a fair trial. Upon review of the record, we note

plaintiff did not object to those specific statements during the closing argument. Thus, we look at whether the “exception,” detailed in *Simmons*, applies to this case. The record demonstrates defense counsel’s arguments were related to the evidence presented at trial, along with the reasonable inferences to be drawn from the evidence. We hold that the statements raised by plaintiff on appeal were not “blatant mischaracterizations of fact, character assassination, or base appeals to emotion and prejudice” such that they fall under the *Simmons* exception to the general rule. See *Simmons*, 162 Ill. 2d at 12-13. Therefore, the trial court’s denial of plaintiff’s motion for new trial was not against the manifest weight of the evidence.

¶ 47

#### CONCLUSION

¶ 48

For the foregoing reasons, we affirm the trial court’s denial of plaintiff’s posttrial motion.

¶ 49

Affirmed.