2012 IL App (5th) 090523-U

NO. 5-09-0523

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

AMONIE PARKER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
and	)	
	)	
LLOYD PARKER,	)	
	)	No. 06-L-650
Plaintiff,	)	
	)	
v.	)	
	)	
MICHELLE LAWLER-SHINN,	)	Honorable
	)	Robert P. LeChien,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Goldenhersh and Spomer concurred in the judgment.

ORDER

¶ 1 *Held*: In a case involving a rear-end automobile collision, the jury's verdict in favor of the defendant was not against the manifest weight of the evidence where the plaintiff did not seek medical attention until 3½ months after the accident, there was conflicting evidence concerning the force of the impact of the collision, and the plaintiff's medical testimony concerning causation was premised on information furnished to the expert by the plaintiff. In addition, the circuit court did not abuse its discretion in denying the plaintiff's request for a new trial based on alleged misconduct by defense counsel, in refusing to allow the plaintiff's counsel to question members of the venire about whether they were insured by the defendant's mutual insurance company, and in admitting photographs of the parties' vehicles that the defendant testified fairly and accurately depicted the parties' vehicles after the accident.

¶ 2 The plaintiff, Amonie Parker, filed a complaint alleging that the defendant, Michelle Lawler-Shinn, negligently caused a motor vehicle accident that resulted in her physical

injuries. The defendant admitted her negligence but denied liability for any damages. A jury returned a verdict in favor of the defendant. On appeal, the plaintiff maintains that the jury's verdict was against the manifest weight of the evidence, that defense counsel engaged in various acts of misconduct before and during the trial that denied her a fair trial and warranted sanctions, that the circuit court abused its discretion in limiting her *voir dire* of potential jurors, and that the circuit court abused its discretion in admitting certain photographs. For the following reasons, we affirm

(I)

¶ 3 DISCUSSION

¶ 4 Manifest Weight of the Evidence

¶ 5 This case arises from a rear-end automobile collision that occurred at the intersection of North Belt West and Fullerton Road in Swansea, Illinois, on December 16, 2004. At the time of the accident, the plaintiff's husband, Lloyd, was driving, and the plaintiff rode in the passenger seat. Lloyd testified that he was stopped behind a vehicle at a red light when the defendant rear-ended his vehicle. The defendant testified that she pulled up to the intersection and stopped directly behind the Parkers' vehicle. When the light turned green, the vehicle in front of the Parkers began to move forward through the intersection but stopped suddenly. When Lloyd applied his brakes, the defendant's vehicle bumped the rear bumper of the Parkers' vehicle. The defendant testified that she had removed her foot from the brake pedal, had not pressed the gas pedal, and was moving forward slowly when the accident happened. The plaintiff sued seeking damages for physical injuries arising from this rear-end collision. The original complaint also included a claim by Lloyd for loss of consortium. Lloyd voluntarily dismissed his claim prior to the trial, leaving only the plaintiff's claim for personal injuries.

¶ 6 At the trial, the defendant admitted that she drove negligently when her vehicle struck

the plaintiff's vehicle. The parties disputed the force of the impact. The defendant maintained that she did not hit the plaintiff's vehicle with enough force to cause any physical injuries. The plaintiff, however, disagreed and presented evidence that she suffered soft-tissue injuries. The only testimony concerning the causation of the injuries came from the plaintiff and her treating chiropractor, who opined that her injuries were causally connected to the rear-end collision. The first issue we are concerned with on appeal is whether the jury's verdict is against the manifest weight of the evidence.

¶ 7 In describing the accident, Lloyd testified that he sat at the intersection waiting for the light to change and that he suddenly felt a "big boom." He testified that if he had not been wearing his seatbelt, he might have hit his head on the windshield. He testified that the collision caused his vehicle to move forward as follows: "I had my hand on the wheel. When I got hit it turned to the right and missed the car in front of me." Immediately after the collision, he asked the plaintiff if she was okay, and according to Lloyd, she responded, "For right now." He also testified, however, that she started complaining about "a sting or something, a pain in her back."

¶ 8 He testified that he got out of his car and saw that his rear "bumper was pushed all the way in the right side." When asked to estimate the speed of the defendant's vehicle, he testified as follows: "I know little [*sic*] wasn't lower than ten miles an hour. I know it was pretty hard the way we jerked in the car." He estimated that her speed was "between 25 and up." When asked if he was injured, he testified that he "caught a pain" but that his pain was not as serious as the plaintiff's.

¶ 9 Lloyd testified that when he got out of his car after the accident, he saw that the defendant's bumper and hood were damaged. She apologized and said she was sorry. He admitted that the defendant asked him if he and the plaintiff were okay and that he responded that they were fine. He told the defendant, "So far, my wife is okay."

¶ 10 With respect to the damage to his vehicle, he testified that the day after the accident, he used a sledgehammer to knock his bumper back out.

¶ 11 The plaintiff testified that she and her husband, Lloyd, were sitting at the stoplight when the defendant hit them from behind. She testified that their car moved forward when it was hit. She said she was wearing her seatbelt and that she was pushed forward from the collision and jerked backwards from the seatbelt. She did not exit her vehicle at the accident scene. She testified that at the time of the accident, she was "shook up more than anything" and that she "felt a little stiffness" in her neck. She did not, however, seek immediate medical care. She testified that the defendant walked around to the passenger side of the car and asked her if she was okay. She told the defendant that she was "a little shook up."

¶ 12 She testified that, when the accident occurred, she was headed to H&R Block to apply for a job and that she continued to H&R Block after the accident. She testified that her husband repaired their vehicle, but on cross-examination, she admitted that in her interrogatories, she said that the vehicle was not repaired. At the trial, the plaintiff identified photographs of her vehicle and testified that they were taken after her husband repaired the bumper. The defendant, however, testified that the pictures showed the condition of the defendant's vehicle immediately after the accident and showed only a small scratch on the bumper. The pictures were admitted into evidence at the trial but are not included in the record on appeal.

¶ 13 In describing the accident, the defendant testified that she came to a complete stop at the light behind the Parkers' vehicle. When the light turned green, the cars in front of her started moving, but the car in front of the Parkers' vehicle stopped abruptly, and the Parkers' vehicle also stopped abruptly. The defendant testified that she had taken her foot off her brake and that her car rolled forward and hit the Parkers' bumper. Her foot was not on the accelerator at the time. She estimated that she was going less than five miles per hour, and

she described the impact as a "slight bump."

¶ 14 After the accident, the Parkers pulled over to the side of the road. The defendant testified that she also pulled over. She testified that she got out of her vehicle and did not see any damage to the Parkers' vehicle. Lloyd also told her that there was nothing visibly wrong with his vehicle, and that he and the plaintiff were fine. The defendant said that she walked over to talk with the plaintiff and that the plaintiff said she was fine. She testified that she was not concerned that the plaintiff might have been injured because she "barely touched their bumper." The defendant testified that she and Lloyd mutually agreed not to call the police because there were no injuries and no significant damage to either vehicle. According to the plaintiff and Lloyd, however, they did not want to call the police because Lloyd was driving an uninsured vehicle, and the defendant did not want to call the police because she did not want to report the accident to her insurance company.

¶ 15 The defendant testified that she gave Lloyd her cellular telephone number and told him to call if there were any problems. They both drove away from the scene of the accident, and Lloyd called the defendant less than five minutes later. He told the defendant that his transmission was leaking, that there was a rattle in his vehicle, and that his wife was injured. The defendant, therefore, went to the Belleville police station to fill out an accident report that same day, but an officer at the station told her that she needed to go to the Swansea police station. The defendant went to the Swansea police station a few days later, spoke with officer Terry Schmidt, and filled out an accident report.

¶ 16 In describing the damage to her vehicle, the defendant testified that the accident resulted in a small crack in her bumper and that replacing the entire bumper was cheaper than fixing the cracked bumper. She had it fixed within two weeks after the accident. The mechanic who repaired the defendant's bumper testified that he replaced her bumper cover because of the crack. The bumper cover was made out of "rubbery plastic," and the

mechanic described its condition as "minor damage." He testified that there was no damage to the vehicle's hood.

¶ 17 Officer Schmidt testified that when the defendant came into the police station to fill out an accident report, he inspected her vehicle and saw that it had a small scratch or ding on the front bumper. He described the damage as "very, very minor." The officer testified that, while the defendant was at the police station, he telephoned the plaintiff and that the plaintiff told him that she was fine. At the trial, the plaintiff denied ever speaking with a police officer concerning the accident. Officer Schmidt also testified that he talked to Lloyd on the telephone and asked him and the plaintiff to come to the police station with their vehicle. Lloyd told the officer that the vehicle was in a shop being repaired.

¶ 18 Officer Schmidt had a second conversation with Lloyd a few days later, and he again asked Lloyd to come to the police station with his vehicle. Lloyd told the officer that he was coming to the station with his attorney, but according to Officer Schmidt, he never came. The officer had a third conversation with Lloyd, and Lloyd told the officer that his vehicle was fine, that he paid only $4 to fix a seal in his transmission, and that the repair was unrelated to the accident. He told the officer that he had not taken the plaintiff to the doctor and that she was fine. Officer Schmidt again asked Lloyd to come to the station with his vehicle, but he did not do so. The officer, therefore, administratively closed the case because he believed that the accident resulted in no injuries and that the damages to the vehicles were less than $500. Lloyd testified that when Officer Schmidt called him, the officer threatened to give him a citation and suspend his license because he refused to come into the police station. In addition, Lloyd testified that the officer asked him to bring in his proof of insurance, but he did not have proof of insurance.

¶ 19 Prior to the accident, the plaintiff had been diagnosed with sciatica by her primary physician, Dr. Salma Hilaly. The evidence in the record indicates that sciatica is a painful

condition resulting from a pinched nerve in the low back. According to the medical testimony, the sciatic nerve runs down the leg. A bulging or herniated disc in the low back can pinch the nerve and cause pain to radiate down the leg, a condition known as sciatica. The plaintiff had a disc desiccation (disc compression) at L4/L5, and according to the plaintiff's treating chiropractor, Dr. Benjamin Laux, the disc compression could be the cause of her sciatica. Dr. Laux also testified that the plaintiff was overweight, which may have contributed to her disc compression.

¶ 20 The plaintiff testified that the day after the accident she was stiff and tight in her back and that she started experiencing pain off and on from sitting a certain way or trying to pick something up. The plaintiff, however, did not seek any medical attention. The first medical treatment the plaintiff received after the accident occurred on January 24, 2005, when she went to Dr. Hilaly for her regular checkup. Dr. Hilaly did not testify at the trial; therefore, the only evidence concerning Dr. Hilaly's diagnosis and treatments of the plaintiff's conditions came from the plaintiff's testimony.

¶ 21 According to the plaintiff, on January 24, 2005, she told Dr. Hilaly that she was experiencing pain in the lower part of her back. The plaintiff testified that Dr. Hilaly believed that the pain was from the previously diagnosed sciatica. The plaintiff, however, believed that the pain she was experiencing was different from sciatica. She described the sciatica as numbness in her left leg and sometimes in her arms. The pain she experienced after the accident was in her middle lower back, and she believed that the pain was totally different than sciatica pain. The plaintiff testified that Dr. Hilaly prescribed pain medication and physical therapy for her sciatica. However, she did not go to physical therapy because she insisted that her pain was not from sciatica.

¶ 22 The plaintiff testified that on March 31, 2005, 3½ months after the accident, she was hurting so badly that she could not move when she woke up. Her husband, therefore, took

her to the emergency room. She testified that she told the personnel at the emergency room that the severe pain had started the day before. After the emergency room visit, Dr. Hilaly referred the plaintiff to a chiropractor, Dr. Laux. The plaintiff testified that by the time she went to see Dr. Laux, the pain in her back had gotten so bad that she was bent over and could not do anything.

¶ 23 Dr. Laux testified that he first began treating the plaintiff on April 19, 2005, after Dr. Hilaly referred her to him for treatments. He testified that when he first meets with new patients, he obtains "extensive histories" from the patients because each patient's history is "significant." With patients involved in motor vehicle accidents, Dr. Laux's patient history questionnaires ask for the speed of the vehicles involved in the accident. In filling out her questionnaire for Dr. Laux, the plaintiff wrote that the speed of her vehicle at the time of the accident was "zero miles per hour." With respect to the defendant's vehicle, she estimated that it was going 30 to 40 miles per hour, but she placed a question mark by her answer because, according to Dr. Laux, she was not completely sure. The plaintiff also wrote that the defendant "hit us so hard that the truck moved."

¶ 24 In addition to having the plaintiff fill out medical history forms, Dr. Laux also obtained two radiology reports that described magnetic resonance imaging (MRI) scans of the soft tissue of the plaintiff's thoracic and lumbar spine. The MRIs were taken on April 12, 2005, and were ordered by Dr. Hilaly. Dr. Laux did not know why Dr. Hilaly ordered the MRIs and did not review any of Dr. Hilaly's written notes or any other records from her office anytime during his treatment of the plaintiff. The MRI report for the thoracic spine scans stated that the impression from the scans was negative or unremarkable. The report for the lumbar spine scans, however, stated that the plaintiff had a disc bulging at L4, L5.

¶ 25 Dr. Laux took x-rays of the plaintiff's spine on April 19, 2005, which revealed that she had arthritis in her lumbar spine. Dr. Laux opined that the accident did not cause the

plaintiff's arthritis, but aggravated it. He testified that her x-rays also showed "pelvic and sacral rotation malpositions, which is consistent with the patient wearing a seatbelt during a motor vehicle accident and having a rapid back and forth motion." The x-rays also showed that there was "a deficiency of the height of the femur head" of the left leg, which meant "that the left leg was a little bit low." He felt that the condition of the femur was related to the accident because if the pelvis rotated during the accident, it would "bring that femur down."

¶ 26 Dr. Laux conducted a physical examination of the plaintiff's spine. He found that she had pain in the lower part of her neck "upon palpation." She also had mild "hypertonic contracture," meaning that she had tight neck muscles. The examination of the plaintiff's low back revealed that the muscles on both sides of her low back were tight. With respect to range of motion of the lumbar spine, Dr. Laux found that the plaintiff experienced pain by and was significantly hampered in "forward flexion, extension backwards, right and left lateral flexion." She also experienced lumbar spine spasms.

¶ 27 Dr. Laux testified that his physical examination findings were consistent with Dr. Hilaly's referral and the history that the plaintiff provided him. He diagnosed the plaintiff as having a mild whiplash injury in her neck and a significant strain/sprain injury in her low back due to the accident. He testified that the rear-end collision caused the plaintiff's injuries and that his opinion was based on the history the plaintiff gave and his examinations. Concerning the basis of his opinion on causation, he testified as follows: "There is no other reason that I have anywhere in my records or Dr. Hilaly's or stated from the patient in any of her paperwork concerning any other reason for her to have the injuries that she walked into my office with." Dr. Laux also opined that, to a reasonable degree of medical certainty, the plaintiff's sciatica was aggravated by the rear-end collision and that the pain in the plaintiff's neck was not related to sciatica.

¶ 28 Dr. Laux was asked on direct examination whether he knew if the plaintiff had pain immediately after the accident or if her pain occurred sometime after the accident. He testified that the plaintiff wrote on her medical history questionnaire that, at the point of impact, she experienced pain in her lower back and arms and a little stiffness in her neck. He testified that his opinion concerning causation would not change if she did not experience any pain until the day following the accident. He believed that it was more typical for patients to feel worse the next day. He testified that, although he first saw the plaintiff four months after the accident, this delay in treatment was not unusual. He stated that, after an accident, the typical patient will first see their medical doctor when they are having pain, and the doctor will give the patient anti-inflammatory and pain medication. Although he never reviewed Dr. Hilaly's records, he testified that he believed that was what Dr. Hilaly did with the plaintiff. He added, "[A]fter four months of that not resolving, good doctoring will cause a physician to refer out."

¶ 29 On cross-examination, he testified that if someone has sciatica or arthritis and they are in a motor vehicle accident, he would not expect it to take four months for the sciatica or arthritis to be aggravated. He also testified that it generally does not take 3½ months before someone feels pain from an automobile accident or any other kind of trauma.

¶ 30 Dr. Laux treated the plaintiff until July 6, 2005, when she obtained maximum medical improvement. When he last saw her on July 6, 2005, she reported that she was doing better but was still having pain. She told Dr. Laux that she was "80 percent, maybe even 90 percent." His total charges for the plaintiff's treatments amounted to $3,983.75.

¶ 31 The jury considered this evidence and returned a verdict in favor of the defendant. The plaintiff maintains that the jury's verdict was against the manifest weight of the evidence because the evidence established that the defendant's admitted negligence was the proximate

cause of her injuries. She argues, therefore, that she is entitled to a new trial.[1] We disagree.

¶ 32 "[A] motion for a new trial should be granted only when the jury verdict is contrary to the manifest weight of the evidence." *Moran v. Erickson*, 297 Ill. App. 3d 342, 352, 696 N.E.2d 780, 787 (1998). "A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary and not based on the evidence." *Moran*, 297 Ill. App. 3d at 352, 696 N.E.2d at 787. "The question is not whether the evidence *could have* supported a verdict for the movant, but rather whether a contrary verdict is clearly evident." (Emphasis in original.) *Kim v. Evanston Hospital*, 240 Ill. App. 3d 881, 893, 608 N.E.2d 371, 379 (1992). We will not reverse the circuit court's ruling on a motion for a new trial absent an abuse of discretion. *Moran*, 297 Ill. App. 3d at 353, 696 N.E.2d at 787.

¶ 33 In the present case, the jury considered conflicting evidence concerning the force of the impact of the rear-end collision. The plaintiff and Lloyd testified that the impact was hard enough to move their vehicle forward, resulting in damage to their rear bumper and jerking the plaintiff forward and backward. Lloyd testified that without his seatbelt, his head could have hit the windshield and that the defendant was traveling 25 miles per hour or more at impact. The defendant, however, testified that she slightly bumped the plaintiff's rear bumper, which resulted in minor damage to her vehicle and no damage to the plaintiff's vehicle. The jury considered conflicting evidence concerning the damage, if any, to the parties' vehicles and the plaintiff's physical injuries.

¶ 34 With respect to damage to the plaintiff's vehicle, Lloyd testified that the rear bumper was pushed in from the accident and that he fixed the damage with a sledgehammer. He

[1]The plaintiff's posttrial motion requested the circuit court to grant her a judgment notwithstanding the verdict or, alternatively, a new trial. On appeal, the plaintiff requests only a new trial.

identified a photograph of his vehicle as depicting the condition of his vehicle after he fixed the bumper. The defendant testified, however, that the bumper on the plaintiff's vehicle was not pushed in after the accident. She identified the same photograph the plaintiff identified, stating that it accurately depicted the condition of the plaintiff's vehicle immediately after the collision. She further testified that Lloyd agreed at the scene of the accident that there was no damage to his vehicle. Officer Schmidt asked Lloyd to bring his vehicle into the police station for inspection. Lloyd initially told the officer that his vehicle was in a repair shop and later told the officer that there was no damage. The plaintiff stated in her interrogatories that her vehicle was not repaired. Both the plaintiff and Lloyd testified that there was damage to the hood of the defendant's vehicle, but the mechanic who repaired the vehicle testified that there was no damage to the defendant's hood and that the damage to the defendant's bumper was "very, very minor." The jury was entitled to consider this conflicting testimony in assessing the credibility of the witnesses.

¶ 35 The jury also heard conflicting evidence concerning the plaintiff's injuries. The defendant testified that, at the scene of the accident, both the plaintiff and Lloyd told her that the plaintiff was fine. Five minutes later, after the parties left the scene of the accident, Lloyd called the defendant and told her that the plaintiff was injured. The plaintiff testified that she started feeling pain and stiffness in her neck and back the day after the accident. However, Officer Schmidt testified that he talked with the plaintiff and with Lloyd a few days after the accident, and both of them informed him that the plaintiff was fine and suffered no injuries. The plaintiff did not seek any medical attention until 3½ months after the accident. Again, the jury was entitled to consider these conflicting statements in assessing the credibility of the witnesses. We cannot say that it was inconceivable or unreasonable for the jury to find the plaintiff and Lloyd incredible with respect to their testimony concerning the nature of the collision and the resulting damages and injuries. The

jury is empowered to make credibility determinations. *Moran*, 297 Ill. App. 3d at 354, 696 N.E.2d at 788. In reviewing the circuit court's denial of a motion for a new trial, we cannot " 'sit as a second jury to consider the nuances of the evidence or the demeanor and credibility of the witnesses.' " *Netzel v. United Parcel Service, Inc.*, 181 Ill. App. 3d 808, 813, 537 N.E.2d 1348, 1350 (1989) (quoting *Kitsch v. Goode*, 48 Ill. App. 3d 260, 271, 362 N.E.2d 446, 454 (1977)).

¶ 36 The plaintiff maintains in her appeal that the only medical evidence of causation presented at the trial came from her treating chiropractor who opined that the collision caused her soft-tissue injuries in her neck and back and aggravated her sciatica. The plaintiff describes the chiropractor's testimony as undisputed and uncontested. We disagree. The defendant contested the underlying basis of the chiropractor's opinion, and the evidence was sufficient for the jury to find that the defendant successfully discredited the chiropractor's testimony.

¶ 37 For example, in *Moran*, the plaintiff was involved in an automobile accident and sought a judgment for personal injuries. *Moran*, 297 Ill. App. 3d at 344, 696 N.E.2d at 782. The driver of the other vehicle involved in the accident admitted negligent operation of his vehicle. *Moran*, 297 Ill. App. 3d at 344, 696 N.E.2d at 782. After a trial on the issue of damages, a jury returned a verdict in favor of the negligent driver. *Moran*, 297 Ill. App. 3d at 344, 696 N.E.2d at 782. On appeal, the plaintiff argued that she was entitled to a new trial because the jury's verdict was against the manifest weight of the evidence. *Moran*, 297 Ill. App. 3d at 352, 696 N.E.2d at 787. The plaintiff argued that her treating physicians opined that she suffered from various medical conditions caused by the automobile collision and that their opinions were uncontradicted because the defense did not offer contrary medical evidence. *Moran*, 297 Ill. App. 3d at 353, 696 N.E.2d at 787.

¶ 38 The *Moran* court, however, noted that "a defendant is not required to present medical

testimony to discredit the testimony of the plaintiff's witnesses." *Moran*, 297 Ill. App. 3d at 353, 696 N.E.2d at 788. Instead, a defendant can discredit the plaintiff's medical testimony by challenging the underlying basis for their opinions. *Moran*, 297 Ill. App. 3d at 353, 696 N.E.2d at 788. In *Moran*, the plaintiff's medical experts testified that their opinions were based on information given to them by the plaintiff and her subjective expression of pain. *Moran*, 297 Ill. App. 3d at 353, 696 N.E.2d at 788. The court noted that, although it was reasonable for medical experts to rely on information supplied by the patient for purposes of diagnosis and treatment, the information supplied by the patient was not binding on the jury. *Moran*, 297 Ill. App. 3d at 354, 696 N.E.2d at 788. The jury was required to "make its own assessment of the patient's veracity, not merely with respect to that person's in-court testimony but also with respect to that person's general credibility to the extent that person's credibility is relevant to the ultimate determination of the case." *Moran*, 297 Ill. App. 3d at 354, 696 N.E.2d at 788. "If the jury finds the patient to be incredible, it can correspondingly disregard the opinions of the medical professionals which are based upon information supplied to them by the patient." *Moran*, 297 Ill. App. 3d at 354, 696 N.E.2d at 788. The court in *Moran* stated that there was sufficient evidence presented at the trial for the jury to find the plaintiff incredible with respect to what she testified to at the trial and what she said to medical and healthcare professionals. *Moran*, 297 Ill. App. 3d at 354, 696 N.E.2d at 788.

¶ 39 Likewise, in the present case, the plaintiff's evidence concerning causation came from the plaintiff and her chiropractor. As we have noted above, there was sufficient evidence presented at the trial for the jury to find the plaintiff incredible with respect to the nature of the accident and resulting injuries. Dr. Laux first saw the plaintiff four months after the accident, and he admitted that his opinion concerning causation was largely based on information the plaintiff gave him concerning the nature of the automobile accident and her

reports of pain following the accident. He assumed that the speed of the defendant's vehicle was between 5 and 25 miles per hour. He did not opine that the plaintiff's injuries could have been caused by a collision involving the defendant's vehicle traveling less than five miles per hour, but the defendant testified that she was going less than five miles per hour when she slightly bumped the plaintiff's back bumper. Although it was reasonable for Dr. Laux to rely on information furnished by the plaintiff, the plaintiff's representations to her chiropractor concerning the nature of the accident did not bind the jury to find in her favor.

¶ 40 In addition, the accident occurred on December 16, 2004, and the plaintiff admitted that she did not seek any medical attention with respect to the alleged injuries resulting from the accident until March 31, 2005. On cross-examination, Dr. Laux testified that it generally does not take 3½ months before someone feels pain from an automobile accident or any other kind of trauma. He did not review any of Dr. Hilaly's medical records or any other medical records, other than the MRI reports. He testified that he did not order the MRIs and could not tell the jury "why they were ordered."

¶ 41 Although the plaintiff presented evidence to support a verdict in her favor, we cannot say that such a verdict is clearly evident or that a verdict in favor of the defendant was unreasonable, arbitrary, or not based on the evidence. Accordingly, the trial court did not abuse its discretion in denying the plaintiff's request for a new trial. *Pecaro v. Baer*, 406 Ill. App. 3d 915, 941 N.E.2d 967 (2010).

¶ 42 The plaintiff cites *Anderson v. Zamir*, 402 Ill. App. 3d 362, 931 N.E.2d 697 (2010), in support of her argument that the jury's verdict was against the manifest weight of the evidence. *Anderson*, however, is distinguishable because the issue in that case was the adequacy of the damages award, but in the present case, the jury did not award any damages at all. In *Anderson*, the plaintiff's vehicle was rear-ended by the defendant, pushing the plaintiff's vehicle into the vehicle in front of her. *Anderson*, 402 Ill. App. 3d at 363, 931

N.E.2d at 698. The plaintiff's vehicle was towed from the scene of the accident, and although she did not immediately seek medical attention, she went to the hospital for medical care later that same day. *Anderson*, 402 Ill. App. 3d at 363, 931 N.E.2d at 698. Accordingly, there was no question that the plaintiff actually suffered injury from the accident. In the present case, however, the evidence presented at the trial included conflicting evidence concerning whether the force of the impact was sufficient to result in physical injuries, and the plaintiff did not seek any medical care until she went to the hospital for back pain 3½ months after the accident. The jury also considered evidence that the plaintiff suffered from preexisting conditions of arthritis and disc compression in her low back. The defendant disputed Dr. Laux's opinion on causation to the extent that his opinion was based on representations made by the plaintiff concerning the nature of the accident. By entering a judgment in favor of the defendant, the jury could have believed the defendant's testimony that she "barely touched their bumper" and concluded that the defendant did not cause injuries to the plaintiff. We cannot find that the jury's verdict bears no reasonable relationship to the evidence presented at the trial.

(II)

¶ 43 Alleged Pretrial and Trial Misconduct by Defense Counsel

¶ 44 The plaintiff argues, alternatively, that the defendant's counsel engaged in misconduct before and during the trial that resulted in an unfair trial. We disagree.

¶ 45 First, with respect to pretrial pleadings, the plaintiff maintains that the defense's misconduct began when the defendant denied negligence in her answer to the complaint. The plaintiff maintains that the defendant's negligence was never in dispute because when she reported the accident at the police station, she admitted fault. The plaintiff argues that the defendant, nonetheless, denied negligence when she filed her answer and when the plaintiff filed a motion for summary judgment on the issue of negligence. The plaintiff also

takes issue with the defendant's affirmative defense that alleged that Lloyd proximately caused the plaintiff's injuries through his negligence and the defendant's affirmative defense that the plaintiff failed to mitigate her damages by her delay in seeking medical treatment. The plaintiff argues that the circuit court should have sanctioned the defendant's counsel for these pleadings pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994).

¶ 46 "The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit judge, and that decision will not be overturned unless it represents an abuse of discretion." *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487, 693 N.E.2d 358, 372 (1998). "An abuse of discretion occurs when no reasonable person would rule as the circuit court ruled." *Aguirre v. City of Chicago*, 382 Ill. App. 3d 89, 98, 887 N.E.2d 656, 663 (2008).

¶ 47 "Illinois Supreme Court Rule 137 allows the trial court to award sanctions against parties who filed frivolous pleadings when a pleading has no basis in fact or law." *Benson v. Stafford*, 407 Ill. App. 3d 902, 941 N.E.2d 386, 410 (2010). An attorney's signature on a pleading, motion, or other paper indicates "that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). "Under Rule 137 the test is what was reasonable under the circumstances; in evaluating the conduct of an attorney or party who signs a pleading or other paper filed with the court certifying that he has made a reasonable inquiry into the basis of the pleading or other paper, the court must determine what was reasonable to believe at the time the document was presented to the trial court, rather than engage in hindsight." *In re Estate of King*, 245 Ill. App. 3d 1088, 1103, 614 N.E.2d 1348, 1358 (1993).

¶ 48 In the present case, we cannot say that the circuit court abused its discretion in

denying the plaintiff's motion for sanctions. The defendant testified that she was stopped behind the plaintiff's vehicle at a red light when the light turned green. Lloyd proceeded forward but stopped suddenly when the vehicle in front of his also stopped suddenly causing the defendant to bump the rear bumper of the plaintiff's vehicle. At least at the pleadings stage, these facts could support a defense that the defendant did not negligently cause the collision, but that Lloyd's negligent operation of his vehicle caused the plaintiff's injuries.

¶ 49 The defendant correctly notes in her brief that proof of an accident together with the exercise of ordinary care by the plaintiff does not raise a presumption of negligence on the part of the defendant. *Russell v. Rowe*, 82 Ill. App. 2d 445, 448, 226 N.E.2d 652, 654 (1967). In addition, in cases where a defendant rear-ends the plaintiff, it is for the jury to decide if the accident resulted from the defendant's negligence or was an unavoidable accident. *Bucyna v. Rizzo Brothers Movers, Inc.*, 31 Ill. App. 2d 31, 35, 175 N.E.2d 640, 642-43 (1961). Furthermore, at the time the affirmative defenses were filed, Lloyd had a claim for loss of consortium pending, and the defendant could argue that Lloyd's claim should be reduced by the percentage of his own negligence. See *Blagg v. Illinois F.W.D. Truck & Equipment Co.*, 143 Ill. 2d 188, 201, 572 N.E.2d 920, 927 (1991). Once Lloyd withdrew his loss-of-consortium claim, the circuit court struck the affirmative defenses related to Lloyd's negligence.

¶ 50 In addition, with respect to the affirmative defense of failure to mitigate damages by the plaintiff's delay in seeking medical treatment, the evidence established that the plaintiff did not seek medical attention for her alleged injuries until she went to the emergency room 3½ months after the accident.

¶ 51 Although the defendant ultimately admitted her negligence, the circuit court must determine what was reasonable to believe at the time the pleading was presented to the court, rather than engage in hindsight. *In re Estate of King*, 245 Ill. App. 3d at 1106, 614 N.E.2d

at 1360. Nothing in the record suggests that the defendant's answer and affirmative defenses were not well grounded in fact when they were filed. The defendant's pretrial pleadings had a good-faith basis in law and in fact.

¶ 52 Second, the plaintiff also maintains that defense counsel engaged in misconduct during the trial. We disagree.

¶ 53 The plaintiff first takes issue with defense counsel's conduct during Dr. Laux's testimony. Dr. Laux testified about the questionnaires that the plaintiff filled out concerning her medical history. During his direct examination, Dr. Laux identified Plaintiff's Exhibit 1 as two pages of a three-page questionnaire that the plaintiff filled out as part of her history. Dr. Laux brought the document to court to refer to while he testified. When asked to do so, he handed the document to the plaintiff's attorney, and the following colloquy took place:

"Q. [Plaintiff's Attorney]: Doctor, let me show you what's been marked for identification–

[Defendant's Attorney]: John, can I see it?

[Plaintiff's Attorney]: Yeah.

[Defendant's Attorney]: Judge, I'm objecting. It's not the full questionnaire. It's missing a page.

[The Witness]: Yeah.

[The Court]: What he shows the witness is at this point his business. What gets admitted to the jury is my business. What you want to show to the doctor on cross examination is your business.

[Defendant's Attorney]: Okay.

[Plaintiff's Attorney]: Your Honor, if I may, I didn't show anybody anything. I got this from the doctor.

Q. [Plaintiff's Attorney]: Doctor, can you tell us what Exhibit–

[The Court]: Well, proceed.

Q. [Plaintiff's Attorney]:–1 is, please."

¶ 54 During cross-examination, defense counsel questioned Dr. Laux concerning the significance of inaccurate information given by a patient in the history questionnaires. During the questioning, the following took place:

"Q. Okay. Now, handing you Exhibit 1, I want to talk about this a little bit. It's two pages?

A. No, there's another page.

Q. There's another page?

A. But he didn't take it.

Q. He didn't take it?

A. No.

Q. What is the third page?

A. It's a mysterious page.

Q. And while you're looking for that, the word 'sciatica' never made it in–

[The Court]: Wait. While he's looking at it, let him look.

[Defendant's Attorney]: I'm sorry.

[The Witness]: Three things at once, Your Honor. It's the back. It's that page right there.

Q. [Defendant's Attorney]: The hidden page?

A. Yeah, the double secret hidden page.

Q. It wasn't copied?

A. It wasn't flipped over. It's the other side of that last page.

* * *

Q. Okay. And now this hidden third page–

A. It's not a hidden third page.

Q. This uncopied third page.

A. He has the whole thing. This is my staff copy for me."

¶ 55 At this point in the cross-examination, the plaintiff's attorney objected to the reference to a "hidden third page," stating that he (the attorney) did not hide anything and that it was improper for defense counsel to imply that he had. Dr. Laux explained that his staff made an error in copying the document for his use in court but that he had furnished a complete copy of the document to the defendant's attorney. Defense counsel admitted that he had received the full document and stated, "I'll withdraw the question and rephrase." The defendant's attorney then continued his cross-examination of Dr. Laux and offered no additional questions and made no further comments concerning the third page that was missing from Plaintiff's Exhibit 1.

¶ 56 We do not believe that defense counsel's conduct with respect to Plaintiff's Exhibit 1 denied the plaintiff a fair trial. The defendant's initial objection to Plaintiff's Exhibit 1 during Dr. Laux's direct examination was overruled by the court. Later during cross-examination, when defense counsel began questioning Dr. Laux about the exhibit, the defendant's counsel simply asked about the third page, and Dr. Laux first referred to it as a "mysterious third page." He also referred to it as a "double secret hidden page." Although defense counsel also referred to the page as a "hidden page," the plaintiff's attorney objected to any inference that the page was hidden from the defense. The defendant's counsel admitted that he had the full document, including the missing page, withdrew the question, and moved on. In the presence of the jury, Dr. Laux explained that the full document was furnished in discovery to the defendant, that it was not hidden, and that it was simply an error by his staff in making a copy of the document for the doctor to use during his testimony. Under these circumstances, defense counsel's brief use of the term "hidden" to

describe the missing page did not result in an unfair trial. The jury was fully apprised of the circumstances that resulted in the page being inadvertently omitted from the exhibit, and the defendant's counsel did not pursue a line of questioning that implied that the plaintiff, the witness, or the plaintiff's attorney purposefully withheld information from the defense.

¶ 57 The plaintiff next takes issue with the defendant's attempt to use one of Dr. Hilaly's medical records to cross-examine Dr. Laux and the plaintiff. During cross-examination of Dr. Laux, the defendant's attorney handed Dr. Laux a copy of one of Dr. Hilaly's medical records. Dr. Hilaly, however, did not testify at the trial; therefore, the plaintiff objected to any testimony concerning Dr. Hilaly's records on the basis of hearsay and foundation. The court ruled that the witness could identify the record and testify whether or not he used the record in the care and treatment of the plaintiff. But after further questioning by defense counsel, the court sustained the plaintiff's objection because Dr. Laux testified that he did not rely on Dr. Hilaly's records in his treatment of the plaintiff. On appeal, the plaintiff argues that this line of questioning implied to the jury that the plaintiff had a duty to call Dr. Hilaly as a witness. However, we have reviewed the questioning and disagree that the defendant's questioning of Dr. Laux implied that the plaintiff had a duty to call Dr. Hilaly.

¶ 58 Likewise, when the defendant cross-examined the plaintiff, defense counsel asked the plaintiff about Dr. Hilaly's opinions. The circuit court again sustained the plaintiff's hearsay objections and stated that the witness could testify concerning what she understood her condition to be and could testify concerning her own personal knowledge of events. The circuit court properly sustained the plaintiff's objections, and nothing in this line of questioning denied the plaintiff a fair trial. *Branum v. Slezak Construction Co.*, 289 Ill. App. 3d 948, 959, 682 N.E.2d 1165, 1172 (1997) (holding that sustaining an objection generally cures any prejudicial impact).

¶ 59 The plaintiff next argues that she was denied a fair trial due to certain comments

made by defense counsel during closing arguments. Remarks made during closing argument will not result in a new trial unless the remarks are clearly improper, are prejudicial, and denied the party a fair trial when the trial is viewed in its entirety. *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 42, 920 N.E.2d 582, 606 (2009). Attorneys are permitted wide latitude during closing arguments. *Magna Trust Co. v. Illinois Central R.R. Co.*, 313 Ill. App. 3d 375, 396, 728 N.E.2d 797, 814 (2000). "In determining whether a party has been denied a fair trial due to improper closing argument, a reviewing court gives considerable deference to the trial court, which is in a superior position to assess the effect of counsel's statements." *Magna Trust Co.*, 313 Ill. App. 3d at 396, 728 N.E.2d at 814. In the present case, we do not believe that any comments made by the defendant's counsel during closing argument prevented the plaintiff from receiving a fair trial.

¶ 60 During closing arguments, the defendant's attorney told the jury that he had tried to tell them everything and to present the full picture, but he had "run across some objections along the way" and "had to do a lot of explaining." The plaintiff objected to this comment, and the circuit court sustained the objection and instructed the jury to disregard the remark. "Generally speaking, sustaining an objection and giving an instruction to the jury cures any prejudicial impact of an error." *Wilson v. Humana Hospital*, 399 Ill. App. 3d 751, 760, 926 N.E.2d 821, 830 (2010).

¶ 61 During his closing argument, the defendant's attorney also referred to the plaintiff's failure to call Dr. Hilaly as a witness. The defendant's counsel noted that they (the jury) do not know what Dr. Hilaly's opinions are and that the plaintiff had the burden of proof. The defendant argues that this line of argument implied to the jury that she hid unfavorable evidence from the jury. The plaintiff, however, waived her objection to this argument by failing to object. *Nassar v. County of Cook*, 333 Ill. App. 3d 289, 304, 775 N.E.2d 154, 167 (2002). Regardless of waiver, viewing the argument as a whole, defense counsel did not

suggest that the plaintiff was hiding exculpatory evidence, but that she failed to carry her burden of proof.

¶ 62 The plaintiff argues that the defendant's counsel improperly waved a document from Dr. Hilaly's records in front of the jury, quoted from it, and made reference to it during closing argument. With respect to this contention, the following took place during closing argument:

"[Defendant's Attorney]: All we know is that the plaintiff went to the emergency room of Memorial Hospital on March 31st, 2005, and it's noted, 'When did the pain begin?' 'Yesterday.'

[Plaintiff's Attorney]: I object. That's a document that never has been admitted in evidence. It's not before the court.

* * *

[Defendant's Attorney]: It was shown to [the plaintiff] during her testimony.

[The Court]: Well, it's not substantive evidence. The objection is sustained.

[Defendant's Attorney]: You're not going to see this document.

[Plaintiff's Attorney]: You know what? Enough of that, okay? That's wrong. Did you hear what he said?

[The Court]: I did not.

[Plaintiff's Attorney]: He said, 'Now you're not going to see this document.' And that's an implication somehow we're doing something wrong. He doesn't know how to get evidence into evidence that's his problem, not mine, but he cannot make comments like that and try to prejudice the jury. That's totally improper, and he needs to be admonished by the court. That is an improper comment commenting after you ruled.

[The Court]: Do you have anything you want to say?

[Defendant's Attorney]: Sorry. I'll move on.

[The Court]: Well–

[Defendant's Attorney]: If I may.

[The Court]: Yes, you may, but bear in mind that if I make a ruling and you don't like it you have avenues to, you know, pursue it.

[Defense Attorney]: Right.

[The Court]: But it's not to ask this jury to substitute their judgment for issues of law.

[Defense Attorney]: Sure.

[The Court]: From the beginning of this case it's been made clear that on issues of law I get to make the decision, and, frankly, you don't get to make pot shots about whether you agree or disagree. So go ahead and proceed."

¶ 63 We agree with the circuit court that the defendant's counsel improperly commented to the jury that it was not going to see the document after the circuit court sustained the plaintiff's objection. However, the circuit court properly admonished defense counsel concerning the inappropriate comment, and the defendant's closing argument continued without any further improper comments. Accordingly, this comment did not deprive the plaintiff of a fair trial.

¶ 64 In addition, we agree with the circuit court that the defendant's counsel improperly referred to a medical record that was not admitted into evidence, but this comment was merely cumulative to the evidence that was admitted at the trial and was, therefore, harmless. Defense counsel told the jury that the document referenced the plaintiff's March 31, 2005, visit to the emergency room and indicated that the plaintiff reported that the pain began "yesterday." During the trial, the jury heard the plaintiff testify on this point as follows:

"Q. You told [the emergency room personnel] that you had back pain?

A. Yeah.

Q. And you told them that it had started yesterday?

A. It did start severely the day before, yes, yes.

Q. Okay. So–

A. Because they asked me when did the pain start, like it was then, yeah.

Q. Severe low back pain that you began to experience that made you go to the hospital on March 31st, 2005, began the day before; that's what you told them?

A. That is exactly what I told them."

Defense counsel's comment concerning the contents of the document was the same as the plaintiff's testimony at the trial and was harmless.

¶ 65 Considering the trial as a whole, we cannot conclude that the plaintiff was denied a fair trial due to the conduct of the defendant's counsel. The circuit court sustained the plaintiff's objections when appropriate, overruled her objections when appropriate, properly admonished and instructed the jury, and presided over a fair trial. The circuit court was in the best position to determine whether the plaintiff received a fair trial, and we find nothing in the record that suggests that it abused its discretion in denying the plaintiff's request for a new trial based on the conduct of defense counsel.

(III)

¶ 66 *Voir Dire* of Potential Jurors

¶ 67 The plaintiff's next argument on appeal is that the trial court abused its discretion in refusing to allow her to question members of the venire about whether they were insured by State Farm Insurance Company (State Farm). Prior to the trial, the plaintiff filed a notice of her intent to question members of the venire concerning whether they are insured by State Farm. The plaintiff's request was based on *Lynch v. Mid-America Fire & Marine Insurance Co.*, 94 Ill. App. 3d 21, 418 N.E.2d 421 (1981), and *Casey v. Baseden*, 131 Ill. App. 3d 716,

475 N.E.2d 1375 (1985).

¶ 68 In *Lynch*, the plaintiffs filed a lawsuit against an insurance company for a claim that arose from a fire that destroyed the plaintiffs' insured building. *Lynch*, 94 Ill. App. 3d at 22, 418 N.E.2d at 423. The jury returned a verdict in favor of the plaintiffs. *Lynch*, 94 Ill. App. 3d at 23, 418 N.E.2d at 423. On appeal, the defendant argued that the trial court improperly excused for cause all members of the venire who were insured by the defendant's parent company, Country Mutual Insurance Company. *Lynch*, 94 Ill. App. 3d at 30, 418 N.E.2d at 428. The court noted that the jurors' knowledge of the insurance company's ultimate responsibility to pay the judgment was pertinent and that the jurors could have been questioned as to any prejudices or bias they might have had. *Lynch*, 94 Ill. App. 3d at 30, 418 N.E.2d at 428. The court stated that although the "preferable method of selection would have been to permit the interrogation, we find no reversible error to have occurred." *Lynch*, 94 Ill. App. 3d at 30, 418 N.E.2d at 428-29.

¶ 69 In *Casey*, the parties were involved in an automobile accident, and a jury returned a verdict in favor of the plaintiff. *Casey*, 131 Ill. App. 3d at 718-19, 475 N.E.2d at 1376. On appeal, the defendants argued that the circuit court erred in excusing nine prospective jurors without interrogation because they were insured by the defendants' insurance carrier, Country Companies. *Casey*, 131 Ill. App. 3d at 722, 475 N.E.2d at 1379. The *Casey* court concluded that the reasoning of *Lynch* applied in that case. *Casey*, 131 Ill. App. 3d at 722, 475 N.E.2d at 1379.

¶ 70 In the present case, the circuit court denied the plaintiff's request to question members of the venire concerning whether they were insured by State Farm and ruled as follows:

> "The appellate opinion in *Casey* does not set forth what showing was made to permit the *Lynch* type disclosures. The plaintiff here would have the Court adopt a rule that such disclosure must be made in all cases if a mutual company insures the

defendant. The Court will not adopt an absolute rule permitting the inquiries requested by the plaintiff.

The Court finds that before jurors are required to make the *Lynch* type disclosures the plaintiff must make a showing that affiliation with an insurance company or industry advocate by a potential juror could lead to their bias, prejudice or interest under the circumstances of this case. The initial inquiry is limited to whether the veniremen or their household have received direct (mail, email or phone) contact with anyone regarding how jurors should evaluate automobile cases. The Court will rule on the propriety of follow-up questions on a juror-by-juror basis outside the presence of the jury panel. The Court will then determine whether cause exists for dismissal of the potential juror." (Emphasis in original.)

¶ 71 "The purpose of *voir dire* is to assure the selection of an impartial jury, free from bias or prejudice." *Dixson v. University of Chicago Hospitals & Clinics*, 190 Ill. App. 3d 369, 376, 546 N.E.2d 774, 779 (1989). "The trial judge has the primary responsibility for initiating and conducting *voir dire*, and the scope and extent of *voir dire* are within his sound discretion." *Dixson*, 190 Ill. App. 3d at 375, 546 N.E.2d at 779. "Upon review, an abuse of discretion will be found only if the trial judge's conduct prevented the selection of an impartial jury." *Dixson*, 190 Ill. App. 3d at 375, 546 N.E.2d at 779.

¶ 72 In the present case, the circuit court did not abuse its discretion in conducting *voir dire* of the venire. There is nothing in the record to indicate that any member of the venire had any knowledge concerning the defendant's insurance coverage. The circuit court allowed the plaintiff's attorney to question members of the venire concerning whether they had been contacted about automobile cases and allowed further inquiry out of the presence of other members of the venire if there was an indication that an individual may have bias, prejudice, or interest under the circumstances of the case. The circuit court's *voir dire* did

not prevent the selection of a fair and impartial jury and was not an abuse of discretion.

(IV)

¶ 73 Admission of Photographs

¶ 74 The plaintiff's final argument on appeal is that the circuit court abused its discretion in admitting photographs of the parties' vehicles. The plaintiff argues that there was no foundation for the admission of the photographs. We disagree.

¶ 75 "It is the function of the trial court to determine the admissibility of evidence, and its rulings will not be disturbed absent an abuse of discretion." *Jackson v. Seib*, 372 Ill. App. 3d 1061, 1070, 866 N.E.2d 663, 673 (2007). In *Jackson*, the circuit court did not abuse its discretion in admitting photographs where the plaintiff admitted in his deposition that the photographs fairly and accurately portrayed the condition of his vehicle after the accident. *Jackson*, 372 Ill. App. 3d at 1070, 866 N.E.2d at 673. The court also ruled that expert testimony was not necessary for the admission of the photographs. *Jackson*, 372 Ill. App. 3d at 1070, 866 N.E.2d at 673. "The critical question in admitting these photographs into evidence is whether the jury can properly relate the vehicular damage depicted in the pictures to the injury without the aid of an expert." *Jackson*, 372 Ill. App. 3d at 1070, 866 N.E.2d at 673. Resolution of this critical question is an evidentiary question that the trial judge must determine. *Jackson*, 372 Ill. App. 3d at 1070, 866 N.E.2d at 673.

¶ 76 In the present case, the defendant testified that the photographs at issue fairly and accurately portrayed the condition of the parties' vehicles after the accident. The only evidence before us on appeal is the testimony at the trial that indicated that the photographs showed relatively minor, if any, damage to the vehicles. The plaintiff and Lloyd testified that the collision was a high-impact collision that forced their vehicle forward and jerked the plaintiff forward and backward. Lloyd estimated that the defendant was going 25 miles per hour or more and testified that, if he had not been wearing his seatbelt, his head could have

hit the windshield. The defendant testified, however, that she barely bumped the plaintiff's rear bumper at a speed of less than five miles per hour. She testified that she removed her foot from her brake pedal, she had not yet pressed her gas pedal, and her car was rolling slowly forward when it bumped the plaintiff's rear bumper. If the photographs showed little or no damage to the vehicles, the photographs were relevant not only on the issue of the credibility of the witnesses but also to prove whether the plaintiff suffered any injuries as a result of the accident. *Fronabarger v. Burns*, 385 Ill. App. 3d 560, 565, 895 N.E.2d 1125, 1130 (2008). We cannot conclude that the circuit court abused its discretion based on the record before us.

¶ 77 CONCLUSION

¶ 78 For the foregoing reasons, we affirm the circuit court's judgment entered in favor of the defendant.

¶ 79 Affirmed.