2012 IL App (5th) 110072-U

NO. 5-11-0072

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WILLIAM WATSON and SELMA WATSON,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	St. Clair County.
	)	
v.	)	No. 07-L-201
	)	
PLOCHER CONSTRUCTION COMPANY,	)	Honorable
	)	Lloyd A. Cueto,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Stewart and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court correctly found that the defendant owed a duty to the plaintiffs where the accident and injuries were foreseeable and of an increased likelihood due to the defendant's conduct and where the burden to prevent injuries was minimal. Medical bills were properly admitted into evidence and admission of alleged hearsay statement was harmless error.

¶ 2 The defendant, Plocher Construction Company (PCC), appeals the December 16, 2010, judgment of the circuit court of St. Clair County, which ruled against PCC and in favor of the plaintiffs, William Watson and Selma Watson, and awarded the plaintiffs $207,588.70. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 The underlying case stems from an accident that occurred on Interstate 255 in Centreville Township, when the tractor-trailer the plaintiffs were driving struck the basket of a piece of construction equipment known as a manlift, which was suspended up and over a bridge on the interstate where PCC was performing construction on property owned by the

Prairie Du Pont Levee and Sanitary District (levee district). On February 9, 2009, the plaintiffs filed a three-count, third amended complaint in the circuit court. Additional plaintiffs are listed as parties to the complaint, but are not parties to this appeal. In counts I and II of the complaint, William and Selma, respectively, alleged negligence on the part of PCC. Count III of the complaint is not relevant here, as it applies to the plaintiffs which are not parties to this appeal.

¶ 5 A bench trial was conducted on November 22, 2010, and December 10, 2010, at which the following testimony and evidence was adduced. William Watson testified that in May 2005 he and his wife, Selma, drove together as an over-the-road trucking team and had done so for approximately 30 years. William described the truck they drove as having two seats in the front and a sleeper in the back. William testified that at about 2:30 a.m. on May 15, 2005, he and Selma were traveling south on Interstate 255. He was driving and Selma was sleeping in the bunk. William noted that the stars were out, it was dark, and the headlamps of the truck were on. He testified that as he approached mile marker 13, he saw a sign indicating road construction and reducing the speed limit to 45 miles per hour. William reduced his speed accordingly and noticed that there were two lanes open on a bridge heading south, with concrete walls on both sides. William testified that he was driving in the right lane and a car was traveling in the left lane beside him. Suddenly, William hit what he described as "a box hanging out over the road," and he heard a noise like something had hit the roof of the truck. He testified that there were two hits, the first to the cab and the second to the trailer. William stated that the impact "jerked [him] all around in there" and that his arms hit the steering wheel, his elbow hit the door, and his head was "banged around some." He testified that the roof of the truck was torn off and the air inside the truck "imploded" from the change in air pressure. He explained that the air conditioner was running and that "when the roof disappeared it just formed a big vacuum and it just

exploded." According to William, upon impact, clothing, baseball cards, toiletries, movies, book tapes, and shelves flew outside the truck and fiberglass from the roof went everywhere.

¶ 6 William testified that the accident occurred when he hit "the basket of the crane." He testified that Brent Henschen, an employee of PCC, arrived at the scene and informed the police that the key to the manlift was on the battery box. It was around 6 a.m. when William and Selma went to a motel. They returned to the accident site later that day in a rented vehicle. They noticed under the bridge were two posts with a cable attached to prevent access to the area. However, William testified that the cable was down and they drove to where the manlift was parked under the bridge. He added that even if the cable had been up, they still would have been able to gain access to the area by driving around the posts. William described the area under the bridge as being littered with beer cans, cigarette butts, and trash, and graffiti was painted on the walls. William testified that between a quarter mile and a half mile away was a neighborhood with rundown housing, strip clubs, bars, and liquor stores. Photos were admitted into evidence depicting some of the houses.

¶ 7 William testified that following the accident on Sunday, he and Selma stayed in the motel until Thursday, when another truck was brought to them. He testified further that he was sore all over and light-headed and that he began staggering and bumping into things, which never occurred prior to the accident and which worsened as time progressed. In addition, William reported that he suffered from spells of flickering vision and the room spinning, which caused him to become nauseous and to break out into cold sweats. William specified that these spells lasted up to a full day and, at times, he felt seasick for a week to 10 days. William reported that in the days following the accident, pain developed in the middle of his back and radiated under his ribs on the left side, which felt like someone sticking him with an ice pick. Additionally, William had pain in his neck on the right side and down his right shoulder, all of which hindered his ability to lift and stand.

¶ 8 William testified that, following the accident, he first sought treatment from his family physician, Dr. Janousek, who sent William for an MRI and X rays and prescribed him medication for pain. William noted that shortly thereafter workers' compensation assigned him a new physician, Dr. Sambey, who sent him to therapy, where an equilibrium test was performed. According to William, after the equilibrium test, the therapist "couldn't touch me because he didn't know what was the matter with me." William testified that he was subsequently seen by a neurologist, Dr. Feussner, for treatment of the injuries resulting from the accident. William specified that Dr. Feussner ordered an MRI and that after about three months, he referred William to an ear specialist.

¶ 9 William recalled that, following the accident on May 15, 2005, he and Selma returned home on May 25, but they were unable to return to work until August 9. William testified that he was released to work with no restrictions at that time, but he emphasized that the pain in his neck and back never went away and his vertigo recurred after three to four weeks. Accordingly, William was only able to drive when his symptoms would allow. Moreover, in comparison to the long, over-the-road trips that William drove before the accident, he drove only six miles every other day thereafter, and he was required to pull over and rest when he was symptomatic. William testified that he retired less than two years later because he could no longer manage driving the truck with his medical problems. William reported that he attempted to return to Drs. Sambey and Feussner in the meantime, but they refused to treat him because more than a year had elapsed since the opening of the workers' compensation claim. Accordingly, William returned to his family physician, Dr. Janousek, and reported to him the problems he continued having with his back, neck, and vertigo, over two years after returning to work. Dr. Janousek, in turn, set William up with Drs. Wong and Irwin at Comprehensive Pain Management and referred him to Dr. St. Martin for his ear.

¶ 10 William testified that Drs. Wong and Irwin prescribed pain medication for his back

and neck, which by that time had worsened. In addition, they recommended injections in his back, which William refused due to the risk of paralysis. William stated that the pain medication did not cure him, but simply helped him to function. William testified that Dr. St. Martin administered the same treatment as had Dr. Feussner, which did not improve his symptoms, after which Dr. St. Martin informed William that she could do nothing more to help him.

¶ 11 William then testified pursuant to plaintiffs' exhibit numbers 9, 12, 14, 16, 18, 21, 23, 25, and 27, all of which William agreed were medical bills which accrued as a result of his treatment for injuries sustained in the accident. He testified that he still has pain in his neck, back, and shoulder and that he still bumps into things regularly, none of which existed before the accident. William pointed out that, as a result of the accident, he can no longer jog, play softball, lift heavy objects, mow the yard, or work on his cars. He added that his barn is in need of repair but he is unable to repair it himself because of back pain and the dangers of climbing a ladder with his equilibrium issues. William testified that he takes about seven medications daily for pain, none of which he took before the accident.

¶ 12 Gene Plocher testified that he is the executive vice president of PCC and that he was overseeing the bridge project at the site where the accident occurred. Plocher explained that on the morning of May 15, 2005, a manlift at the construction site was moved by an unknown individual. Plocher acknowledged that his company was responsible for securing the construction site and that all of his employees were in charge of safety and security. He testified that there were two trailers in the vicinity of the construction. One was located on top of the bridge and the other was located in a nearby enclosed area and used as an office to store miscellaneous items. Plocher noted that the trailers were locked at night to prevent theft.

¶ 13 The PCC safety manual was admitted into evidence as plaintiffs' exhibit 34. Referring

to the manual, Plocher testified that incidents involving property damage are subject to investigation and that he conducted such an investigation following the accident. Plocher acknowledged that PCC policy requires the use of forms for investigations and that a detailed incident report must be completed by the safety manager. He admitted, however, that he did not abide by these requirements and that no paper records of the investigation exist other than the report which was completed by the state police.

¶ 14 Plocher testified that, both during and after the investigation, he was uncertain whether the key had been left on the manlift on the weekend in question. However, he claimed that the manlift was secure because the key was either hidden on the manlift or locked inside the trailer. He explained that if the key was hidden on the manlift it would be secure and that such is a standard operating procedure. However, he acknowledged his earlier deposition at which he testified that it was probably not a good idea to leave a key in a manlift over a weekend. Plocher testified that after the accident there was a question of whether the manlift could be operated without a key, but it was later determined that a key was necessary.

¶ 15 At that point in the testimony, plaintiffs' counsel introduced plaintiffs' exhibit 4, over the objection of defense counsel. Plaintiffs' exhibit 4 is a statement of Brent Henschen, one of PCC's employees. The statement was recorded via telephone on May 17, 2005, and memorialized in writing in the form of a recorded statement resume, which was prepared by Jayne Graybill, a supervisor for PCC's insurance company. According to the statement, Henschen was contacted by Plocher around 2:45 a.m. on the morning of the accident and he arrived at the accident scene around 4:30 a.m. Henschen was quoted in the statement as follows:

> "I looked around for the key and could not locate it but I could start the man lift and lowered the boom to the ground. I don't know why I could start the man lift [without]

a key but later I asked the superintendent and he thought it came to the jobsite like that. I took the battery cables out of it so no one could move it from there."

¶ 16 Plocher admitted that he reviewed Henschen's statement as part of the investigation following the accident. When confronted with the statement in comparison to his testimony, Plocher replied that "there was some confusion about the manlift and what it did before the accident and what it did after the accident." He conceded on cross-examination that he understood the manlift could start without a key after the accident. Plocher testified that the safety manual provides that all tools and equipment should be inspected before use, which would include checking to see if the manlift could start without a key.

¶ 17 Dave Vandeloo testified that he has worked for PCC for 14 years as a superintendent. Accordingly, Dave is in charge of safety and security at job sites. Dave testified that the levee district gave PCC permission to store its equipment on the levee district property. He added that when PCC first rented the manlift, he thought it needed a key to start and had it started without a key he would have returned it for repair. Dave did not recall his conversation with Brent Henschen following the accident and he denied telling Henschen that the manlift came to the job site with the ability to start without a key, despite Henschen's above statement to the contrary which was recorded by Jayne Graybill two days after the accident.

¶ 18 Dave testified that he thought he normally kept the key to the manlift locked in the trailer when it was not in use and that if he was going to be away from the manlift for the weekend he would want to lock it in the trailer. Dave asserted that the manlift was secured under the bridge when he left on the Friday afternoon before the accident. He explained that although it is industry standard to hide keys in the equipment panels when not in use, he could not recall whether the key to the manlift was stored in the trailer or hidden on the manlift at the time of the accident. Dave described keys to industrial equipment as universal

keys. He specified that, unlike keys to cars and trucks which are all different, a key to one piece of equipment will also start other pieces of equipment.

¶ 19 Dave agreed that the crime rate is higher in Cahokia/Centreville where the accident occurred than it is in Clinton County where he resides. He also acknowledged in his deposition testimony that the crime rate is likely higher in Cahokia/Centreville than it is in Belleville and O'Fallon. Dave agreed further that theft and vandalism occur in high-crime areas and that he would take extra steps to secure equipment in high-crime areas. Dave testified that each night, he locked the cable gates which were pulled across the road leading to the construction site, but he conceded that anyone could ride a bike around the gates or step over them to gain access to the site on foot.

¶ 20 Chris Caminiti testified that he has been in construction for approximately 13 years and that he worked on the bridge project in May 2005. Chris confirmed that there were two trailers at the job site, one of which was surrounded by a six-foot, chain link fence and the other of which was chained up to prevent theft. He noted that there were cable gates which blocked access to the site, but also conceded that a person could easily access the area on foot. Chris agreed that when they left the job site they typically locked tools and keys in the trailers. He further agreed that if equipment is to be left over a weekend, it is safer to lock the keys to that equipment in a trailer or truck.

¶ 21 Chris testified that Dave Vandeloo was his supervisor who handled the key to the manlift and decided where the key was placed at the end of the day. Chris testified that the key was sometimes stored in the trailer, but he could not recall if that was the case before or after the accident. Chris noted that it was common practice and consistent with safety procedure to hide the key on the manlift so others on the job who were in need of using it could do so. However, Chris agreed that Dave could have easily taken the key home or locked it in the trailer and doing so would have made more sense than leaving it on the

manlift over the weekend.

¶ 22 In addition to the above testimony, the evidence deposition of Officer Scot Pirtle was admitted into evidence. At the deposition, Officer Pirtle testified that he has been employed by the St. Clair County sheriff's office for 10 years and he was a patrol deputy at the time of the accident. Officer Pirtle was shown a photograph, which he identified as Highway 255, Stolle Road, in Cahokia, which is the site where the accident occurred. Officer Pirtle denied being involved with the investigation of the accident. He identified the area in the photograph as a high-crime area, in comparison to O'Fallon and Collinsville, and added that it would not be safe to leave keys on heavy equipment in that area because of the probability of theft or vandalism.

¶ 23 The circuit court entered an order and final judgment on December 16, 2010, finding in favor of William and Selma, and against PCC, and ordering PCC to pay $207,588.70 to William and Selma. After its motion to vacate the judgment was denied, PCC filed a timely notice of appeal. Additional facts will be provided as necessary in our analysis of the issues on appeal.

¶ 24 ANALYSIS

¶ 25 PCC raises three issues on appeal, which we have restated as follows: (1) whether PCC owed a duty of care to William and Selma, (2) whether the circuit court erred by admitting William's medical bills into evidence, and (3) whether the circuit court's admission of Brent Henschen's recorded statement into evidence violated the rule against hearsay.

¶ 26 *I. Duty*

¶ 27 The first issue on appeal is whether PCC owed a duty of care to William and Selma. The three requirements a plaintiff must prove to succeed in a negligence action are: "(1) the defendant owed a duty of care; (2) the defendant breached that duty; and (3) the plaintiff's resulting injury was proximately caused by the breach." *Hooper v. County of Cook*, 366 Ill.

App. 3d 1, 6 (2006). Here, the sole requirement PCC challenges is whether it owed a duty to William and Selma, specifically to protect them against the criminal acts of the third party who moved the manlift. "The question of whether a duty sufficient to support a negligence claim exists is an issue of law to be reviewed *de novo*." *Colombo v. Wal-Mart Stores, Inc.*, 303 Ill. App. 3d 932, 933-34 (1999).

¶ 28 The long-standing, general rule of this court is that person A is under no duty to protect person B from the criminal acts of person C, absent a special relationship between persons A and B. See *Iseberg v. Gross*, 227 Ill. 2d 78, 87 (2007). However, as in the instant case where there is affirmative conduct on the part of person A, which allegedly contributed to or created the risk of harm, we depart from the general rule and proceed with the traditional negligence test. *Id.* at 94, 97. "In determining whether a duty exists in a particular case, a court must weigh the foreseeability of the injury, the likelihood of the injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden on the defendant." *Colombo*, 303 Ill. App. 3d at 934.

¶ 29 *A. Foreseeability of the Injury*

¶ 30 One of the factors considered in the determination of whether a duty exists is foreseeability. As PCC aptly notes, "[e]ven if a defendant acts negligently, liability does not automatically attach if an independent, intervening, illegal act of a third person causes [the] plaintiff's injury." *Lucht v. Stage 2, Inc.*, 239 Ill. App. 3d 679, 685 (1992). "Generally, where between the defendant's negligence and the plaintiff's injury an independent, illegal act of a third person has intervened which causes the plaintiff's injury, and without which it would not have occurred, the criminal act is a superceding cause of injury relieving the originally negligent party of liability." *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 224 (1988). However, "[t]here is an exception where the defendant's acts or omissions create a condition conducive to a foreseeable intervening criminal act." *Id.* "If the criminal act is

reasonably foreseeable at the time of the negligence, the causal chain is not necessarily broken by the intervention of such an act." *Id*. PCC argues that the criminal activity in this case was not foreseeable for two reasons: (1) because there was no evidence of any prior criminal activity at the construction site involving the same risk of injury and (2) because Officer Pirtle failed to opine that the levee district was a high-crime area.

¶ 31 *1. Foreseeability Based on Prior Criminal Activity*

¶ 32 PCC first contends that there was no foreseeability because there were no prior instances involving the same risk of injury at the construction site. Illinois law does not *per se* require prior incidents of the same criminal activity in order to find a duty. *Shea v. Preservation Chicago, Inc.*, 206 Ill. App. 3d 657, 663 (1990). If a "prior incidents" rule is rigidly applied, the initial victim will always lose while subsequent victims are allowed recovery. *Id*. PCC does not dispute this point. It contends, however, that although evidence of the same criminal act is not required to establish foreseeability, the plaintiffs must prove that the injury they suffered resulted from the "same risk."

¶ 33 PCC cites *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203 (1988), in support of its position. In *Rowe*, an intruder entered an office building, injured one person, and killed another. 125 Ill. 2d at 208. Evidence showed that the locks in the building were not secure due to a number of master keys which were, with the defendants' knowledge, unaccounted for. *Id.* at 210. The Illinois Supreme Court stated that "simply because no violent crimes had been committed at the office park does not render the criminal actions here unforeseeable as a matter of law." *Id*. at 227. It added that "[u]nder the circumstances here the crimes were within the scope of the foreseeable risk created by the inadequate control with regard to the master and grandmaster keys." *Id*. The *Rowe* court further held that "[a]lthough burglary standing alone is a crime against property interests, it also involves a high risk of personal injury or death if the intruder is confronted." *Id.*

¶ 34 In applying *Rowe* to the instant case, PCC contends that in order for the plaintiffs to show that their injuries resulted from the same risk, there must be evidence of prior vandalism to the manlift or, at a minimum, to PCC's equipment. We disagree. As noted in particular by the court in *Rowe*, although there had been no prior crimes of violence at the office park, "where a plaintiff's injury results from the same risk, the existence of which required the exercise of greater care, unforeseeability of what *exactly* could develop and the extent of the injury or loss will not limit liability." (Emphasis added.) 125 Ill. 2d at 227.

¶ 35 In the case at bar, PCC's own witnesses established that there were foreseeable risks of theft and vandalism at the construction site and that greater care was exercised to prevent those risks from becoming reality. PCC witnesses testified that the trailers on-site were locked and secured with a six-foot fence to prevent theft. Dave Vandeloo admitted that the crime rate is higher in Cahokia/Centreville where the accident occurred than it is in the adjacent Clinton County, and higher than in other areas of St. Clair County. Dave further testified that theft and vandalism occur in high-crime areas and that he takes extra steps to secure equipment in such areas. Additional testimony established that there is a rundown neighborhood within one-half mile from the construction site and that the area was littered with beer cans and cigarette butts, all of which are visual clues of possible trespassing there.

¶ 36 We acknowledge PCC's challenge to the evidence of the beer cans and cigarette butts as insufficient to result in foreseeability. However, as the appellate court established in *Shea*, "the proper inquiry is to consider *all relevant circumstances* ***, under the facts of each particular case," to determine whether a duty exists. (Emphasis added.) 206 Ill. App. 3d at 663. The litter in the area is but one of many considerations. With this in mind, we note additional considerations. For example, PCC was clearly in the best position to guard against the criminal activity in this case. See *Shea*, 206 Ill. App. 3d at 662. Notably, PCC was in control of the construction site and all of the equipment thereon, including the manlift, as

well as the means of securing it appropriately. PCC's witnesses testified that safety and security were of great importance, especially the safety of those traveling on the highway. Notwithstanding this testimony, however, other evidence revealed an obvious lack of consensus among PCC personnel regarding the whereabouts of the key to the manlift when the accident occurred, as well as whether the manlift could be started without a key prior to, during, or after the accident. The evidence shows that the plaintiffs' accident and injuries resulted from the risk of theft and vandalism at the construction site. PCC is not relieved from liability just because the specifics of the circumstances leading to the plaintiffs' injuries were unforeseen. See *Rowe*, 125 Ill. 2d at 227. For these reasons, PCC's argument that there was no foreseeability because there were no prior instances involving the same risk of injury must fail.

¶ 37 *2. Foreseeability Based on the Testimony of Officer Scot Pirtle*

¶ 38 In addition to the argument regarding the same risk of injury, PCC contends that the criminal activity in this case was not foreseeable because Officer Scot Pirtle failed to opine that the levee district was a high-crime area. Officer Pirtle, who had been employed by the St. Clair County sheriff's department for 10 years, identified the accident site as a high-crime area and added that it would not be safe to leave keys on heavy equipment there because of the probability of theft or vandalism. PCC challenges the foreseeability of the accident and injury in this case because Pirtle testified that the only calls he had responded to in the levee district were related to vehicle accidents rather than theft or vandalism and he was uncertain whether the specific levee itself was a high-crime area. This argument is without merit.

¶ 39 Officer Pirtle opined that the levee likely runs for miles. It is of no consequence that the pinpoint locale of the accident was not identified as a high-crime location. Noteworthy is Pirtle's repeated emphasis that the levee lies within Cahokia, which is undisputably a high-crime area. This was corroborated by PCC's own witness who acknowledged that the crime

rate in Cahokia/Centreville is higher than other areas in and around St. Clair County. In addition, we defer to the above rule that all relevant circumstances must be considered in determining whether a duty exists (see *Shea*, 206 Ill. App. 3d at 663), and Officer Pirtle's testimony is merely one of many pieces to that puzzle. Accordingly, PCC's argument that there was no foreseeability because Officer Pirtle failed to identify the precise location of the accident as a high-crime area also fails.

¶ 40 An additional challenge PCC raises is regarding the validity of the admission of Officer Pirtle's testimony based on the *Frye* analysis. See *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). We find *Frye* inapplicable here. "Generally, in Illinois, pure opinion testimony of an expert is admissible if the expert is qualified by knowledge, skill, experience, training, or education in a field that has ' "at least a modicum of reliability" ' and the testimony would assist the jury in understanding the evidence." *Noakes v. National R.R. Passenger Corp.*, 363 Ill. App. 3d 851, 858 (2006) (quoting *Turner v. Williams*, 326 Ill. App. 3d 541, 552 (2001) (quoting *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 799 (1999))). "Pure opinion testimony that does not involve a new or novel scientific technique or procedures or depend upon new or novel scientific principles to support its conclusion need not be subjected to a *Frye* test." *Noakes*, 363 Ill. App. 3d at 858. In this case, Officer Pirtle's testimony was not based upon new or novel scientific methods but, rather, his personal knowledge and experience. Officer Pirtle emphasized that his opinion was based on his training as well as his experience of working and responding to complaints in St. Clair County. Accordingly, PCC's *Frye* argument is misplaced and the admission of Officer Pirtle's testimony was proper.

¶ 41 *B. Additional Factors*

¶ 42 In addition to the foreseeability of the injury, other factors to consider in determining whether a duty exists include the likelihood of the injury, the magnitude of the burden of

guarding against it, and the consequences of placing that burden on the defendant. See *Colombo*, 303 Ill. App. 3d at 934. Here, the likelihood of injury when keys are left on a manlift in a high-crime area can be substantial. In contrast, the burden of guarding against the injury in this case was minimal and the consequences of that burden were nonexistent. Simply ensuring that the keys were locked in one of the trailers at the end of the workday was, according to evidence, a routine occurrence at the job site. Removing the keys from the manlift and securing them properly would have taken little to no effort. Accordingly, the additional factors are in favor of finding that a duty existed in this case. Our *de novo* review of the applicable facts and law in this case leads us to conclude that there was a duty sufficient to support a negligence claim. See *Colombo*, 303 Ill. App. 3d at 934.

¶ 43 *II. Medical Bills*

¶ 44 The second issue on appeal is whether the trial court erred by admitting William's medical bills into evidence, with the exception of those from Dr. Stephen Irwin and Dr. Michele Hargreaves-St. Martin. As the plaintiffs aptly note in their brief, PCC is not contesting the foundation for these medical records. Instead, the substance of PCC's argument appears to be that the plaintiffs failed to prove that these bills were caused by the accident. "In order to recover for medical expenses, the plaintiff must prove that he *** has paid or become liable to pay a medical bill, that he *** necessarily incurred the medical expenses because of injuries resulting from the defendant's negligence, and that the charges were reasonable for services of that nature." *Baker v. Hutson*, 333 Ill. App. 3d 486, 493 (2002). PCC presents the following three arguments with regard to the medical bills at issue: (1) there was no expert testimony linking the bills to the accident; (2) William had preexisting medical conditions; and (3) there was a two-year-and-four-month gap in William's treatment.

¶ 45 *A. Expert Testimony*

¶ 46 PCC first argues that the plaintiffs presented no expert testimony to show that William's medical treatment and resulting bills were linked to the accident. Illinois law establishes that " '[t]he proponent must ** present *evidence* that the charges were necessarily incurred because of injuries caused by the defendant's negligence.' " (Emphasis added.) *Arthur v. Catour*, 216 Ill. 2d 72, 82 (2005) (quoting *Baker*, 333 Ill. App. 3d at 494). Such evidence is present in this case. William testified at length regarding his limitations, pain, and vertigo, none of which existed prior to the accident, and he specified that the medical bills at issue accrued as a result of being treated for the injuries he sustained in the accident. No evidence to the contrary was presented.

¶ 47 PCC challenges the bills from Drs. Sambey and Feussner, as well as those from Heartland Rehabilitation, Invision North Florida, Shands Hospital at Live Oak, and Southern Open MRI. PCC contends that these bills lack the requisite evidentiary proof that they were necessitated by the accident. We disagree. William testified that he was referred to Dr. Sambey by workers' compensation following the accident and that he was subsequently seen by Dr. Feussner, who ordered an MRI and referred him to an ear specialist for his vertigo. Some of the challenged bills directly reference the accident. Other evidence in the record was sufficient to allow the circuit court to infer that the bills resulted from treatment for injuries which were caused by the accident. See *Westlake v. C. House Corp.*, 2011 IL App (1st) 100653 (proximate cause established by direct evidence or inferred by circumstantial evidence). For example, although some of the bills do not mention the accident, either the bills or the accompanying medical records in the record specify the identical symptoms William began experiencing immediately after the accident. Moreover, the evidence shows that William was well before the accident. He was not being treated for any pain or vertigo, and he was driving the truck with Selma 330 days a year. Moreover, William was taking no

medication before the accident, in comparison to seven medications thereafter. In addition, William's driving time and distance was greatly reduced and he ultimately had to retire early because of the continuing effects of the accident. Given the depth of the evidence in the record, we cannot say that the circuit court erred by considering these bills as evidence of William's damages.

¶ 48 *B. Preexisting Medical Conditions*

¶ 49 PCC next argues that some medical bills represented William's preexisting medical conditions. PCC points out that William has degenerative changes in his spine, including arthritis, as well as disc bulges. PCC emphasizes Dr. Irwin's inability to opine that these problems were caused by the accident. PCC also points out that William had a hernia in 2004 for which he underwent surgery in 2008. These arguments are not only misplaced but also misleading. We note additional testimony of Dr. Irwin that he believes William's pain is related to the accident and that because the pain is chronic, he expects to provide future medical treatment for William. Moreover, as mentioned above, William testified that he was doing well prior to the accident. There is no evidence that he was being treated for any medical problems before the accident and he was able to drive his truck for extensive periods. Although William acknowledged the hernia and subsequent surgery, he testified that the hernia was never painful. For these reasons, we find evidence in the record to support the circuit court's finding that the bills at issue were related to the accident, rather than a preexisting medical condition.

¶ 50 *C. Gap in Treatment*

¶ 51 PCC's final argument is that there was a two-year-and-four-month gap in William's treatment, thereby calling into question whether the bills were for accident-related treatment. PCC contends that after Dr. Sambey released William back to work following the accident, it was not until two years and four months later that William again sought treatment. We

disagree. William testified that although he was released to return to work with no restrictions, he attempted to return to Drs. Sambey and Feussner but they denied treatment because his workers' compensation claim had expired. Moreover, William testified that his back and neck pain never went away and that his vertigo returned within a few weeks. In addition, William testified that he was forced to retire because the symptoms interfered with his ability to drive. William's testimony was unrefuted. Although William admitted that he did not return to his family doctor until two years after Dr. Sambey released him, as established above, all of the subsequent medical bills and/or treatment records reference the identical symptoms William experienced right after the accident. PCC offered no evidence to the contrary. Accordingly, the circuit court did not err by considering these bills as evidence of William's damages, despite the gap in treatment.

¶ 52 *III. Hearsay*

¶ 53 The final issue on appeal is whether the circuit court's admission of Brent Henschen's recorded statement into evidence violated the rule against hearsay. Assuming, *arguendo*, that the circuit court erroneously admitted the statement, any such error would have been harmless. The substance of the disputed statement is that one employee of PCC told another employee of PCC that the manlift could be started without the key before the accident. As the plaintiffs aptly note in their brief, however, the circuit court did not base its decision on this fact. Instead, the circuit court found in its order and final judgment, as a matter of fact, that the key was left in the manlift. Accordingly, any alleged error in admitting Henschen's statement would have been harmless.

¶ 54 CONCLUSION

¶ 55 For the above reasons, we affirm the December 16, 2010, order of the circuit court.

¶ 56 Affirmed.