2015 IL App (5th) 140251-U

NO. 5-14-0251

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DONALD PAUL BROWN, as Special Administrator of the Estate of Margaret Janet Brown, Deceased,	)	Appeal from the Circuit Court of St. Clair County.
Plaintiff-Appellee,	)	
v.	)	No. 03-L-261
ST. CLAIR ANESTHESIA, LTD., and DANIEL P. GILLEN,	)	Honorable Andrew J. Gleeson,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: Because genuine issues of material fact remained with regard to the issue of the scope of consent granted by the decedent in this case, the trial court erred when it granted summary judgment to the plaintiff on the question of liability; because moot and errant evidentiary rulings created the situation that led to the trial court's directed verdict for the plaintiff on the question of causation, and this is not likely to recur on remand, we do not address the propriety of the directed verdict; judgment reversed, cause remanded for new trial.

¶ 2 The defendants, St. Clair Anesthesia, Ltd., and Daniel P. Gillen, M.D., appeal a judgment entered by the circuit court of St. Clair County on February 26, 2014, on a jury verdict rendered against the defendants and for the plaintiff, Donald Paul Brown, as

special administrator of the estate of Margaret Janet Brown, deceased. In conjunction with the appeal of that judgment, the defendants challenge several interlocutory orders and rulings merged therein. For the following reasons, we reverse the judgment and remand for a new trial.

¶ 3 FACTS

¶ 4 The original complaint in this case was filed over a decade ago, on May 5, 2003, and alleged causes of action against the defendants, and other defendants not relevant to this appeal, based upon medical treatment administered by the defendants to Margaret Janet Brown on and around October 28, 2002. As one can imagine, the record on appeal is voluminous and is replete with information not relevant to this appeal. The parties, however, are very familiar with the issues underlying this litigation, and therefore we will confine our discussion of the facts to those directly relevant to the issues raised on appeal. The complaint at issue in this appeal, which is the plaintiff's third amended complaint (the complaint), was filed on October 4, 2012. It alleges, *inter alia*, one count of medical battery against each of the two defendants who remain in this case and who are listed above. For purposes of this appeal, the crux of the complaint, as drafted and as further developed in the trial court, is the allegation that Dr. Gillen, an anesthesiologist who was at all relevant times an employee of St. Clair Anesthesia, Ltd., committed a medical battery against Mrs. Brown in conjunction with a quadruple coronary artery bypass graft surgery (the procedure) that was performed on Mrs. Brown on October 28, 2002, in that as part of the procedure, Dr. Gillen or his agent placed both a central venous pressure catheter (CVP) and a Swan-Ganz catheter (SG) in Mrs. Brown's neck, when in fact,

according to the complaint, Dr. Gillen had permission from Mrs. Brown to place only the CVP. The complaint alleges that as the direct and proximate result of the alleged medical battery, Mrs. Brown's pulmonary artery was punctured, and the subsequent blood loss resulted in her death later on October 28, 2002. The complaint further alleges that plaintiff Donald Paul Brown, who was Mrs. Brown's husband, suffered damages as the result of the death of his wife.

¶ 5 The plaintiff's theory of the case, as recounted by the plaintiff in his brief on appeal, is that consent for the insertion of one or more catheters had to be in writing, and that the written consent executed by Mrs. Brown prior to the procedure in this case allowed only for the insertion of the CVP, not for the insertion of the SG, which the plaintiff alleges was an unauthorized "separate and distinct" undertaking. On the basis of this theory, the plaintiff moved for summary judgment on the issue of liability. The defendants vigorously opposed the plaintiff's motion for summary judgment, contending, as they do on appeal, that consent may be oral or written, and that in any event the insertion of the SG was "part and parcel" of the insertion of the CVP, because, according to the defendants, the SG "is used in conjunction with" the CVP, as the SG "is a small catheter that is inserted into the CVP line" to provide monitoring of blood pressures in the chambers of the heart and in the pulmonary artery.

¶ 6 On February 20, 2007, the Honorable Robert P. LeChien entered an order granting partial summary judgment to the plaintiff on the issue of liability. However, on May 29, 2007, in response to materials submitted by the defendants along with their motion to reconsider, Judge LeChien vacated his prior ruling, concluding that a question

of fact existed that precluded summary judgment. On March 7, 2012, the plaintiff again moved for summary judgment on the issue of liability, for essentially the same reasons. On May 14, 2012, the Honorable Lloyd A. Cueto held a hearing on the plaintiff's motion. The same day, Judge Cueto denied the motion by written order, although he did not explain why it was denied.

¶ 7 On October 2, 2012, the plaintiff moved *in limine* to exclude at trial, *inter alia*, testimony from Dr. Charles Bishop regarding oral communications he may have had with Mrs. Brown about the SG prior to the procedure. During the hearing on the motion, Judge Cueto ruled in favor of the plaintiff, finding that the insertions of the CVP and the SG were "two different procedures," each of which required the written consent of Mrs. Brown. On December 10, 2012, the plaintiff again moved for summary judgment on the issue of liability, again for the same reasons. The plaintiff noticed the motion for hearing a little over a year later, and the Honorable Andrew J. Gleeson presided over said hearing on January 15, 2014. Ultimately, Judge Gleeson granted the plaintiff's motion, ruling on January 24, 2014, that "there are no issues of material fact that exist on the issue of liability."

¶ 8 The case proceeded to trial on February 20, 2014. The plaintiff called Dr. Raj Nanduri,[1] a pathologist, to testify about the autopsy she performed on Mrs. Brown on

[1]In his brief on appeal, the plaintiff refers to Dr. Nanduri at one point as the "[p]laintiff's non-controlled expert witness" and at another point as "[p]laintiff's expert witness." In any event, it is clear from the record and from the arguments put forward by

October 29, 2002. Dr. Nanduri testified that prior to rendering her final opinion that Mrs. Brown died of "hemorrhagic shock secondary to laceration of the right lung due to [SG] catheterization," she "had some medical records to review" regarding Mrs. Brown's history of coronary heart disease and the procedure undertaken on October 28, 2002. She testified that the records "confirmed" her findings. She testified that during the autopsy, she found a lot of blood in Mrs. Brown's chest cavity and a lot of blood in the tissue of the right lung.

¶ 9 On cross-examination, Dr. Nanduri denied that her testimony was that Dr. Gillen had put the SG in the wrong place. She also testified that during the autopsy, she did not see a hole in the right pulmonary artery. She testified that she had reviewed the report related to a chest X-ray taken 40 minutes after the procedure ended, and conceded that the radiologist who read the X-ray had not noted in the report the presence of blood in the chest cavity at that time. Dr. Nanduri agreed that if blood was present, she would expect the radiologist to note it in his or her report. When counsel for the defendants attempted to question Dr. Nanduri about a second X-ray report, taken later in the day, Judge Gleeson ruled that although Dr. Nanduri conceded that she reviewed the report, because she stated that she did not rely upon the report, counsel could not cross-examine her about its contents. When counsel asked Dr. Nanduri whether it would have been important to her "findings" to know what the later X-ray showed, Dr. Nanduri testified

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the plaintiff on appeal that Dr. Nanduri was an expert witness who offered an expert opinion at trial.

that although she used the medical records or X-ray reports to "correlate" her findings, she did not "have to correlate every bit of information that you see in the medical records and say whether this goes with my findings or not."

¶ 10 Dr. Gillen was allowed to testify only as to his name and background credentials and experience. He was not allowed to give any opinion testimony, because the circuit court had ruled prior to trial that Dr. Gillen's discovery deposition testimony was not adequate disclosure under Illinois Supreme Court Rule 213 (eff. Jan. 1, 2007). The court also prohibited Dr. Gillen from testifying in front of the jury as to the facts he observed firsthand during the procedure, again on the basis of Rule 213. However, the court did allow his testimony regarding both his opinions and his factual observations by way of an offer of proof outside the presence of the jury.

¶ 11 Therein, Dr. Gillen testified as to the various consent forms Mrs. Brown signed prior to her surgery, and explained what both a CVP and an SG are, and how they are used together. He testified that he had provided anesthesia for cardiac cases "[e]ight to nine hundred times," had utilized an SG in each case, and had never provided anesthesia for a cardiac bypass without utilizing an SG. He testified that healthy people do not undergo bypass procedures, that Mrs. Brown's heart was failing, and that the procedure was "an urgent surgery." He testified that during the procedure, he placed the SG in the correct position. He testified that shortly thereafter, he "noticed a small amount of blood in the endotracheal tube." He notified the lead surgeon, Dr. Daily, who called Dr. Suen "to come and evaluate the airway" while Dr. Daily continued with the procedure. Dr. Suen performed a bronchoscopy, which uncovered a small amount of blood on the right

side of Mrs. Brown's chest. When Dr. Suen suctioned out the blood, he did not notice any active bleeding. Dr. Gillen opined that the lack of active bleeding indicated that "whatever injury had occurred had been a minor injury that had resolved." Dr. Daily completed the procedure. Thereafter, Dr. Suen and Dr. Daily "explored the right chest to see if they could determine any damage to the pulmonary artery." Dr. Gillen testified that Dr. Suen and Dr. Daily "did not discover any source of bleeding" but "noted a small hematoma." A second bronchoscopy performed by Dr. Suen noted "no active bleeding" and "no change from his previous exam." Dr. Gillen opined that had his placement of the SG "perforated the pulmonary artery such that [Mrs.] Brown was going to bleed out and die," Dr. Suen and/or Dr. Daily would have been able to see some evidence of that.

¶ 12 Dr. Gillen testified that Mrs. Brown's vital signs "were essentially normal" during the procedure, which lasted from 8 a.m. until 1 p.m., and that there was no evidence of bleeding in the endotracheal tube. He opined that had the SG "caused any clinically significant injury to the pulmonary artery such that Mrs. Brown was going to bleed and die," he would expect there to be bleeding in the endotracheal tube. He further opined that had such an injury occurred, the X-rays taken subsequently would not have been normal; instead, they would have shown blood in the chest. Dr. Gillen testified that Mrs. Brown's vital signs were monitored for five additional hours after the procedure was completed, and opined that the vital signs gave no indication "that she was bleeding out or had any injury to her pulmonary artery."

¶ 13 Counsel then returned to the issue of consent. Dr. Gillen testified that the insertion of the CVP and the SG are "complimentary" procedures; that the insertion of the SG is

not "contradictory" to the insertion of the CVP; and that it is not "substantially different from" or "exclusive of" the insertion of the CVP. He testified that the insertion procedures are "part and parcel of one another" and that they are necessary for patients undergoing coronary artery bypass surgery. Dr. Gillen testified that no separate physician's order is generated for an SG for a patient undergoing a bypass, because "it's part of the same procedure for anesthesia and monitoring of the patient through the CVP." He opined that Mrs. Brown's written consent for the insertion of the CVP covered and encompassed the monitoring with the SG. He testified that he had never seen, or used, a specific form authorizing the use of an SG. He opined that the written consent was "an acceptable consent and within the standard of care," and that if Mrs. Brown had orally consented specifically to the insertion of the SG, that would also be an acceptable consent and within the standard of care.

¶ 14 After all live testimony had been completed, the trial judge allowed certain medical records to be admitted into evidence, but ruled that defense counsel could not read to the jury portions of records about which no witness had testified. After the defense rested, the plaintiff moved for a directed verdict with regard to causation, arguing that only one witness, Dr. Nanduri, had testified with regard to the cause of death. The defendants opposed the motion, contending that causation and the credibility of Dr. Nanduri were questions for the jury to determine, and noting that the jury could disregard or find unconvincing the testimony of Dr. Nanduri for a variety of reasons. The trial judge characterized Dr. Nanduri's testimony as "uncontroverted," and granted the plaintiff's motion for a directed verdict as to causation. Accordingly, the only issue

submitted for the jury's consideration was that of damages. The jury returned a verdict for the plaintiff for $1 million. The defendants' motion for a new trial was denied, and this timely appeal followed.

¶ 15 ANALYSIS

¶ 16 On appeal, the defendants first contend the trial court erred when it granted the plaintiff's motion for a summary judgment on the issue of liability. The crux of the defendants' position is twofold: (1) disputed issues of fact exist as to the scope of consent granted by Mrs. Brown and as to whether the CVP and the SG are separate procedures requiring separate and distinct grants of consent; and (2) the trial court was mistaken in its belief that written consent was required by law. The plaintiff counters that "there is no question that appropriate consent was not obtained" in this case because the written consent signed by Mrs. Brown "clearly does not encompass" the insertion of the SG and because "under Illinois law, consent to anesthesia services require[s] written patient consent." In support of his first proposition, the plaintiff argues that "because the risks associated with the [CVP and SG] procedures are not substantially similar," the procedures themselves "cannot be substantially similar." In support of his second proposition, the plaintiff cites administrative regulations that he claims create a requirement that consent to the SG be written.

¶ 17 We review *de novo* a trial court's decision to grant or deny a motion for a summary judgment. *Taylor v. Bi-County Health Department*, 2011 IL App (5th) 090475, ¶ 26. A summary judgment is proper only where there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. *Id.* "The trial court may

grant a summary judgment after considering the pleadings, depositions, admissions, exhibits, and affidavits on file." *Id*. However, " 'a summary judgment is a drastic method of terminating litigation' " (*id*. (quoting *Trtanj v. City of Granite City*, 379 Ill. App. 3d 795, 799 (2008))), and accordingly "must be awarded with caution to avoid preempting a litigant's right to trial by jury or the right to fully present the factual basis of a case where a material dispute may exist." *Jackson v. Graham*, 323 Ill. App. 3d 766, 779 (2001). " '[W]here doubt exists, the wiser judicial policy is to permit resolution of the dispute by a trial.' " *Id*. (quoting *Meck v. Paramedic Services of Illinois*, 296 Ill. App. 3d 720, 725 (1998)). We will reverse an order granting a summary judgment when we conclude "that a material issue of fact exists or that the summary judgment was based upon an erroneous interpretation of the law." *Pagano v. Occidental Chemical Corp*., 257 Ill. App. 3d 905, 909 (1994).

¶ 18 In the case at bar, the parties agree that because the plaintiff has chosen to style his cause of action as a medical battery claim, rather than a negligence claim, the key issue is the scope of the consent granted by Mrs. Brown prior to the performance of the procedure. We agree as well. In Illinois, a plaintiff may recover in a medical battery action if the plaintiff proves one or more of the following: (1) a complete lack of consent to medical procedures performed; (2) treatment against a patient's will; and/or (3) treatment rendered that is at substantial variance with the consent given. *Hernandez v. Schittek*, 305 Ill. App. 3d 925, 930 (1999). "The scope of the patient's consent is critical to a determination of liability, in that the physician's privilege extends to acts substantially similar to those to which the patients consented." *Id*. The question of

whether a patient's consent is at substantial variance with the treatment actually rendered is an issue "which necessarily belong[s] before [a] jury." *Kus v. Sherman Hospital*, 268 Ill. App. 3d 771, 781 (1995); see also *Mink v. University of Chicago*, 460 F. Supp. 713, 718 (N.D. Ill. 1978) (questions of fact related to scope of consent "are to be determined by the jury").

¶ 19 On the basis of the foregoing, we do not agree with the plaintiff that summary judgment was appropriate in this case. First, we reject the plaintiff's notion that Illinois law requires written, rather than oral, consent to the procedures in question. The plaintiff has cited no case law in support of this notion, and we are aware of none. Moreover, none of the cases cited by the plaintiff can be read to remotely stand for the proposition that written consent is required and that therefore only written consent may be considered in a medical battery claim. Indeed, in *Hernandez v. Schittek*, 305 Ill. App. 3d 925, 930-931 (1999), one of the primary medical battery cases relied upon by the plaintiff, we specifically considered "[t]he scope of the conversation" between the patient and the physician, in addition to the written consent form, when determining that the trial court should have granted the plaintiff's motion for a directed verdict on her medical battery claim. The plaintiff has provided no cogent argument or analysis that might justify crafting the administrative regulations he has cited, which relate to hospital licensing and participation in Medicare, into a departure from the existing common law of medical battery in Illinois as explicated in *Schittek* and other decisions. We decline to disturb longstanding law, and conclude that to the extent the trial court believed written consent was required in this case, the trial court erred.

¶ 20 Second, that error notwithstanding, it is not at all clear that the written consent form signed by Mrs. Brown did not include consent to the SG. It is undisputed that Mrs. Brown gave written consent to the "insertion of [a] CVP and/or arterial line." The defendants contend this written consent was sufficient to cover the insertion of the SG. When opposing the plaintiff's motion for summary judgment as to liability, the defendants presented the affidavit of Dr. Kenneth J. Tuman, who averred that: (1) the purposes of a CVP and an SG are the same; (2) the insertion of the SG "is not contradictory, substantially different or exclusive of the insertion of" the CVP; (3) the CVP and the SG "are complimentary [*sic*] and/or 'part and parcel' of one another and a necessary procedure"; (4) the written consent signed by Mrs. Brown "covers and/or encompasses the use" of the SG; and (5) he had "not seen nor utilized a consent form specific to the" SG. On the basis of the evidence offered by the defendants, we conclude that genuine issues of material fact exist with regard to whether the written consent signed by Mrs. Brown encompassed the SG.

¶ 21 Third, even if the written consent form did not cover the SG, genuine issues of material fact exist with regard to whether Mrs. Brown orally consented specifically to the SG. In support of their contention that Mrs. Brown did so consent, the defendants offered to the trial court, prior to trial, the affidavit of Dr. Charles G. Bishop, Jr., who averred that the day prior to Mrs. Brown's procedure, he "had an informed consent discussion" with her. Although Dr. Bishop averred that he had "no independent recollection" of his discussion with Mrs. Brown, he described in detail his "well[-]established habit, custom and practice" regarding such discussions, which included explaining in detail the use of

both the CVP and the SG, and the risks involved. He averred that because of the nature of the procedure Mrs. Brown was scheduled to undergo the following day, he "absolutely would have automatically and out of habit discussed," and believed that he did discuss, the fact that both a CVP and an SG would be used and the risks related thereto. He averred that Mrs. Brown consented orally to the use of the CVP and the SG.

¶ 22 However, as detailed above, prior to trial the plaintiff moved *in limine* to exclude at trial testimony from Dr. Bishop regarding oral communications he may have had with Mrs. Brown about the SG prior to the procedure. Also as detailed above, during the hearing on that motion, Judge Cueto ruled in favor of the plaintiff, finding that the insertions of the CVP and the SG were "two different procedures," each of which required the written consent of Mrs. Brown. On appeal, the plaintiff attempts to justify the exclusion of Dr. Bishop's testimony on the grounds that written consent was necessary and therefore the motion for summary judgment was properly granted. As explained above, written consent was not required, and the jury should have been allowed to hear all relevant and admissible evidence regarding the scope of Mrs. Brown's consent to the use of the SG.[2]

¶ 23 Fourth, although the plaintiff contends on appeal that "because the risks associated with the [CVP and SG] procedures are not substantially similar," the procedures

[2]We note that for Dr. Bishop's testimony to be deemed admissible at trial on remand, it will have to comport, *inter alia*, with Rule 406 of the Illinois Rules of Evidence. See Ill. R. Evid. 406 (eff. Jan. 1, 2011).

themselves "cannot be substantially similar," we agree with the defendants that there is far more to this question than the mere comparison of the risks involved. In addition to the evidence described in detail above, we note as well the testimony adduced from Dr. Gillen during his offer of proof outside the presence of the jury. Dr. Gillen testified that the insertion of the CVP and the SG are "complimentary [*sic*]" procedures; that the insertion of the SG is not "contradictory" to the insertion of the CVP; and that it is not "substantially different from" or "exclusive of" the insertion of the CVP. He testified that the insertion procedures are "part and parcel of one another" and that they are necessary for patients undergoing coronary artery bypass surgery. Dr. Gillen testified that no separate physician's order is generated for an SG for a patient undergoing a bypass, because "it's part of the same procedure for anesthesia and monitoring of the patient through the CVP." He opined that Mrs. Brown's written consent for the insertion of the CVP covered and encompassed the monitoring with the SG. He testified that he had never seen, or used, a specific form authorizing the use of an SG. He opined that the written consent was "an acceptable consent and within the standard of care," and that if Mrs. Brown had orally consented specifically to the insertion of the SG, that would also be an acceptable consent and within the standard of care.

¶ 24 We also are unpersuaded by the plaintiff's claims that because the procedures purportedly "are addressed in separate chapters in medical textbooks," and because the hospital in question purportedly "utilizes separate billing codes" and "lists separate risks" for each procedure, the trial court could conclude, as a matter of law, that the procedures were not "part and parcel" of one another but were in fact "separate" procedures.

Genuine issues of material fact exist that should have been presented to the jury. Accordingly, for all of the above reasons, we reverse the judgment of the circuit court of St. Clair County and remand for a new trial at which a jury may make the determination of liability in this case.

¶ 25 We turn now to the defendants' second contention on appeal, which is that the trial court erred by directing a verdict in favor of the plaintiff with regard to causation when Dr. Nanduri's opinions were impeached on cross-examination and a jury could have chosen to disregard or find unconvincing her testimony. Because we have already determined that this cause must be reversed and remanded for a new trial, we may address this issue only if we determine it is likely to recur on remand. See, *e.g.*, *Pielet v. Pielet*, 2012 IL 112064, ¶ 56 ("reviewing court may address issues that are likely to recur on remand in order to provide guidance to the lower court and thereby expedite the ultimate termination of the litigation"). To determine if that is the case, we first must consider the evidentiary rulings made by the trial court that created the situation in which the directed verdict was entered, with the assumption that any moot or erroneous rulings will not be repeated on remand.

¶ 26 As the defendants point out, the trial court made four key rulings that severely limited the case the defendants could present with regard to causation and that resulted in Dr. Nanduri being the only witness to testify thereto: (1) the exclusion of the expert testimony of Dr. Gillen, purportedly because the defendants had not complied with Illinois Supreme Court Rule 213 (eff. Jan. 1, 2007); (2) the exclusion of the lay testimony of Dr. Gillen as to what he observed during the procedure, again because of a purported

violation of Rule 213; (3) the limitations placed on the defendants' cross-examination of Dr. Nanduri; and (4) the refusal to allow defense counsel to read to the jury portions of Mrs. Brown's medical records that the parties allowed into evidence by stipulation.

¶ 27 With regard to the first two rulings−the exclusion of Dr. Gillen's expert testimony and the exclusion of his lay testimony−we conclude that we need not address the question of whether said exclusion was error. As the appellate court recognized in *Tsoukas v. Lapid*, 315 Ill. App. 3d 372, 379 (2000), "[o]ne of the primary purposes of Rule 213 is to avoid surprise"; therefore, when we reverse and remand for a new trial on other grounds, there is no need to determine if there was a violation of Rule 213, because "no surprise will arise on retrial and the issue is now moot." In the case at bar, the plaintiff is now well aware of the scope of testimony the defendants plan to introduce from Dr. Gillen on remand, both as an expert witness and as a lay witness, and cannot be heard to object on the basis of Rule 213. Moreover, to the extent the defendants believe it prudent to do so, the defendants may supplement their Rule 213 disclosures on remand.

¶ 28 We must, however, briefly address the limitations the trial court placed on the cross-examination of Dr. Nanduri. As noted above, Dr. Nanduri clearly testified as an expert witness at trial. As the defendants correctly note, the Supreme Court of Illinois has held, clearly and unequivocally, that an expert witness may "be cross-examined with respect to material reviewed by the expert but upon which he [or she] did not rely." *People v. Pasch*, 152 Ill. 2d 133, 179 (1992) (citing *Piano v. Davison*, 157 Ill. App. 3d 649, 671-72 (1987)). In his brief on appeal, the plaintiff has cited no cases, and this court is aware of no cases, that contradict *Pasch*. Moreover, in his brief on appeal the plaintiff

has provided no cogent argument or analysis that would support a deviation from *Pasch*. The trial court erred when it ruled that counsel could not cross-examine expert witness Dr. Nanduri about an X-ray report that Dr. Nanduri conceded she reviewed, but claimed not to have relied upon. On remand, should the plaintiff present Dr. Nanduri as a witness, we trust the trial court will allow the cross-examination of her to proceed in accordance with the law.

¶ 29 The refusal to allow defense counsel to read to the jury portions of Mrs. Brown's medical records that the parties allowed into evidence by stipulation was erroneous as well. As the defendants aptly note, "[i]t is well-settled that, once evidence is admitted in a case, it is available for all purposes, and every party is entitled to the benefit of all the evidence," regardless of which party produced it. *People ex rel. Sherman v. Cryns*, 321 Ill. App. 3d 990, 993 (2001). Although the plaintiff now contends−without explanation, analysis, or citation to the record on appeal−that no proper foundation for the medical records was presented, it is clear from the record that prior to trial the parties stipulated that no foundation issues existed with regard to the admission of the records. Should this issue arise on remand, we trust the trial court will rule in accordance with the law.[3]

[3]We note as well that on remand, should the plaintiff object on the basis that the records are not relevant or are too complex for the jury to understand without expert testimony−objections not raised at the previous trial or during the course of this appeal−the trial court will need to conduct an inquiry into said objection or objections and make findings relevant thereto. See, *e.g.*, *Troyan v. Reyes*, 367 Ill. App. 3d 729, 736

¶ 30 Our analysis of the moot and errant evidentiary rulings made by the trial court leads us to conclude that it is not likely that on remand the trial court will again direct a verdict for the plaintiff on the issue of causation, and certainly not under circumstances similar to those in the previous trial. Accordingly, we decline to consider whether the trial court erred in entering a directed verdict with regard to causation in the previous trial.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we reverse the judgment of the circuit court of St. Clair County and remand for a new trial.

¶ 33 Reversed; cause remanded for new trial.

(2006).