NOTICE
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2011 IL App (5th) 090262-U

NO. 5-09-0262

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

KEVIN KAHRIG,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Madison County.
	)	
v.	)	No. 04-L-360
	)	
ILLINOIS SOUTHWEST ORTHOPEDICS,	)	
LTD.,	)	Honorable
	)	A. A. Matoesian,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justice Spomer concurred in the judgment.
Justice Goldenhersh specially concurred.

ORDER

¶ 1 *Held*: The verdict of the jury in favor of the defendant was not against the manifest weight of the evidence, and defense counsel's improper question relating to damages does not require reversal.

¶ 2 The plaintiff, Kevin Kahrig, appeals from the judgment of the circuit court of Madison County entered upon a jury verdict in favor of the defendant, Illinois Southwest Orthopedics, Ltd. (ISW Orthopedics). On appeal, Kahrig argues that the verdict is against the manifest weight of the evidence and that a statement by defense counsel during cross-examination of Kahrig amounted to reversible error. We affirm.

¶ 3 BACKGROUND

¶ 4 On April 16, 2004, Kahrig filed a complaint against Timothy Penn, M.D., and his employer, ISW Orthopedics, essentially alleging that Penn had negligently performed a surgical procedure known as a lateral release during an arthroscopy of

Kahrig's left knee. On November 7, 2008, Kahrig filed a first amended complaint against both defendants, adding counts alleging negligent failure to obtain an informed consent for the lateral release. In their briefs filed with this court, both parties assert that the court dismissed the counts of the complaint against Penn. The record the appellant has provided us does not include an order dismissing Penn, but it is clear that the case proceeded to a jury trial only against ISW Orthopedics, based on the treatment provided by Penn. Although we cannot verify when or in what manner the counts of the complaint against Penn were dismissed, there are no issues that concern the nature of this alleged dismissal. The jury trial commenced against ISW Orthopedics on January 5, 2009. The relevant evidence presented at the trial is as follows.

¶ 5 Kahrig testified that he owned a construction company that he started in 1993 when he was 20 years old. He stated that he enjoyed working long hours of physical labor, as well as many other physical activities, such as bike riding, volleyball, running, and weightlifting. Kahrig testified that, in 2002, he was running 5 to 10 miles per day in addition to working 10 to 16 hours per day building houses, and in that time period, he began developing some knee pain. About a year after the pain began, he went to see Penn on the recommendation of another physician.

¶ 6 Kahrig identified the patient history form he filled out before his first appointment with Penn. In that form, Kahrig noted that he had pain and weakness in both knees, especially in his left knee. The pain was aggravated by squatting, kneeling, and using stairs, and sometimes his knee gave way and made crackling or popping noises. He testified that, during his first office visit, Penn measured his thighs and found that his left thigh was five centimeters smaller in circumference than his right thigh. Kahrig testified that he thought Penn did not measure correctly and

that he had not listed any atrophy on the history form because none existed. After the first appointment, Penn sent him for an EMG test. Kahrig testified that the technician administering the EMG test properly measured his thighs and found no difference in the circumference. Kahrig testified that he next went for an MRI and then went back to see Penn, who told him that the results of the MRI were "unremarkable." Penn gave him an injection in his knee, which helped, but only for a couple of days.

¶ 7 Kahrig signed a consent form allowing Penn to do arthroscopic surgery on his knee, which he believed allowed Penn only to look inside his knee and "clean it up." He testified that he did not understand the consent to encompass any other surgical procedures, including a lateral release. He stated that, if he had understood the possible complications of a lateral release, he would not have consented to it. The consent form he signed authorized Penn to perform "the following operation or procedure: arthroscopy proceed as indicated left knee" and "such other unforseen operations or procedures as may be deemed necessary by the surgeon." Kahrig testified that Penn told him that he would be back to "100%" within a week or two after the arthroscopy.

¶ 8 Penn performed the surgery on March 13, 2003. Kahrig testified that the day after the surgery, he was in severe pain even though he was taking the pain medication Penn had prescribed. He went to Penn's office for an unscheduled visit, and Penn gave him some additional pain medication. He stated that he did not know that Penn had performed any surgical procedures during the arthroscopy other than cleaning up his knee. He testified that the new pain medication Penn prescribed did not work, and in the early morning hours of the next day, he went to the emergency room, where they gave him more pain medication. Kahrig testified that the pain was still very bad when he left the emergency room.

¶ 9 On March 24, 2003, Kahrig returned to Penn's office for a follow-up appointment. Penn drained fluid off his knee and had him begin physical therapy that day. Kahrig testified that, with physical therapy, his knee improved, particularly his range of motion. He thought the physical therapist's notes exaggerated the amount of improvement he experienced. He also testified that it was his physical therapist who told him that Penn had performed a lateral release during the arthroscopic surgery.

¶ 10 Kahrig testified that he saw Penn on April 7, 2003, and that Penn again drained his knee. He testified that his knee "definitely moved easier after it was drained." His final visit to Penn was on April 28, 2003. He disagreed with Penn's office notes of that date, in which Penn described him as making considerable progress. Kahrig explained that, at his physical therapy appointment three days earlier, the physical therapist had noted that he had insisted that something was wrong with his left knee. He testified that, after the swelling subsided, he had difficulty walking on the treadmill or using an elliptical machine because his knee was "mal-tracking and locking." He testified that he did not go back to Penn because he was having a lot of problems, he disagreed with Penn about "a lot of things," and he wanted a second opinion.

¶ 11 Kahrig went to Dr. Richard Lehman for a second opinion. Lehman told him that, sometimes, during a lateral release procedure, the surgeon cuts into the muscle instead of simply releasing the portion that should be released. Kahrig agreed to allow Lehman to do a second surgery to try to reattach his thigh muscle to his left knee. Kahrig testified that, between Penn's surgery and the MRI Lehman had ordered, he had not injured his left leg in any way. Lehman ultimately performed a second surgery on his left knee. Kahrig testified that the difference in how he felt between

the first and second surgeries was like "night and day." He testified that, after Lehman's surgery, he regained most of the function he had lost after Penn's surgery but, at the time of the trial, he could no longer run, bike, or play volleyball and he could walk without difficulty only on a level surface.

¶ 12 During defense counsel's cross-examination of Kahrig regarding damages, the following colloquy ensued:

"Q. [Defense counsel:] I guess the question I have for you, sir, is if you are losing all this money how is it that you bought [th]is $300,000 boat six months ago?

[Plaintiff's counsel]: Judge, I object to that. That's a completely improper question.

THE COURT: I'll sustain the objection.

[Plaintiff's counsel]: That's ridiculous.

THE COURT: I agree.

[Defense counsel]: I don't have anything further."

Kahrig's attorney did not move for a mistrial or request that the court give any additional instructions to the jury regarding the question.

¶ 13 Penn, an orthopedic surgeon, testified that he worked for ISW Orthopedics when another physician referred Kahrig to him for a left knee evaluation. Penn testified that Kahrig initially complained of pain and weakness in his knee and an inability to do some of the activities he enjoyed. He stated that the most striking finding in his physical examination of Kahrig's knee was what appeared to be "significant quadricep[s] atrophy on the left side." Penn noted that Kahrig was a "very muscular person" and that the atrophy "was so striking that [he] actually made a phone call to Dr. Bell [the referring physician] to discuss it after [Kahrig's] visit." Penn explained that he measured the circumference of Kahrig's thighs by measuring

15 centimeters up from the proximal fold of the patella, which is the kneecap, that he marked that spot with a pen, and that he then measured each thigh at that height. Penn testified that there was no question that Kahrig's left thigh was atrophied at his first appointment.

¶ 14 Penn testified that when he examined Kahrig's knee, he found that Kahrig had good static strength, range of motion, and stability in his ligament structures and that "he really didn't have much irritability in the knee." In the first examination, he felt the biggest issue was why Kahrig had such pronounced quadriceps atrophy, and he still did not know the answer by the time of the trial. He testified that his first strategy for answering that question was to find out if Kahrig had any nerve injury at a level higher than the quadriceps muscles, so he sent him for an EMG test. Before Kahrig left his office that day, Penn told him that the level of atrophy in his left thigh was a real concern for someone as physically fit as him.

¶ 15 Penn testified that the EMG report came back "essentially negative," which Penn interpreted to mean that nerve injury was not likely. Penn discussed the results with Kahrig, who explained more fully than in their initial appointment that the pain he experienced was located lower than or inferior to the patella, in the area of the patellar tendon, and that it was particularly noticeable when he was squatting. Penn explained that this information led him to think that Kahrig's problem might be "an interarticular process" for which he should obtain an MRI. The MRI was done on February 10, 2003.

¶ 16 Penn testified that after the MRI was completed, he reviewed the MRI films and the radiologist's report, and the MRI "showed nothing of significance." He agreed with the radiologist that "there was subtle irregularity in the medial compartment" of the knee, suggestive only of some "mild wear and tear changes." Penn testified that,

based on the MRI results, he thought that Kahrig might have developed a condition known as anterior impingement, a condition not uncommon for athletes and others who "work out a lot." Penn described that condition as a pinching of the tissues in the front part of the knee where the fat pad is located, just behind the patellar tendon. Penn testified that the most reasonable next step was to give Kahrig an injection of a steroidal anti-inflammatory in his knee and that such an injection would be both diagnostic and therapeutic. He stated that, even if Kahrig's pain and weakness was relieved for only a few days, that result could indicate the nature of the problem. Penn testified that he discussed the results of the MRI and the possible need for an arthroscopy with Kahrig and scheduled another appointment with him in one month.

¶ 17 About two weeks later, Kahrig telephoned and said that he was still having pain in his knee and that he wanted to go ahead and schedule the arthroscopy. He testified that he discussed Kahrig's likely postoperative prognosis, telling him that about two weeks after the surgery, his stitches would be removed and he might need to have some fluid drained from his knee due to swelling.

¶ 18 Penn summarized the surgery, beginning with the method he used to secure Kahrig's leg. After securing the leg, he placed a tourniquet "way up high on the thigh right at the groin" because that was the best location from which to secure the tourniquet and to constrict the blood supply coming into the thigh. He explained that he uses the same tourniquet location for surgeries of ankle fractures, foot surgeries, knee replacements, and knee arthroscopies. Penn testified that, after he inserted the scope into Kahrig's knee, he surveyed the knee, the joint surfaces, the cartilage, and the cruciate ligaments. As he was viewing the inside of Kahrig's knee, he took pictures of his findings. Those pictures were displayed for the jury as Penn described the surgery. While viewing the interior of the knee during the arthroscopy, Penn

found an irregularity he described as a blister. Penn acknowledged that he had not used the term "blister" in his operative notes, but he testified that the blister was documented on the photographs taken during the surgery. He testified that overloading or excessive pressure of the knee joint caused the blister.

¶ 19 Penn explained the procedure he used when performing the lateral release. He testified that he could "actually see the tibia joint surface" from the portal on the outside of the knee. He described the anterior fold of the patella and the lower portion of the vastus lateralis obliques (VLO). He testified that he cut a section from the "lower portion of the VLO fibers down about to where the portal is." While explaining this part of the surgery, he was pointing out the locations to which he referred on the photographs being shown to the jury. Penn testified that releasing that portion of the VLO resulted in decreased pressure on the front part of the knee where the patella and the femur were contacting each other. Penn denied that he cut the vastus lateralis muscle during the surgery. He testified that the MRI Lehman had ordered showed "almost definitively" that he did not cut the muscle. Penn compared the MRIs taken just before and after his surgery, explaining that the MRI taken after his surgery and before Lehman's surgery showed a normal outcome after a properly performed lateral release.

¶ 20 Penn testified that, immediately after the surgery, he told Kahrig and his girlfriend that he had done a lateral release during the arthroscopy. He testified that he told Kahrig again at his office the following day. When he met with Kahrig the day after the surgery, he understood that Kahrig was in great pain, but that did not surprise him and did not lead him to believe that anything was wrong. Penn described the visit as a typical postoperative situation. Penn next saw Kahrig 11 days after the surgery. At that time, Kahrig had more swelling in his knee than Penn would have

preferred, but Penn felt that his recovery was otherwise fairly normal. Penn testified that the last time he saw Kahrig was on April 28, 2003. He asserted that Kahrig was not fully recovered on that date, but given his initial difficulties, he was doing fairly well with only the usual amount of swelling.

¶ 21 In addition to Kahrig's and Penn's testimony, the jury also heard testimony from Kahrig's expert witness, Dr. Dan Samani, and from ISW Orthopedics' expert witness, Dr. Joseph Ritchie. Samani, an orthopedic surgeon, testified that he had reviewed all of Kahrig's relevant medical records. He testified that Kahrig had been very active in sports and weightlifting, that he had excellent strength and quadriceps development in both legs, and that he had sought treatment for anterior pain in his left knee. Samani testified that he knew Kahrig before the surgery and that he did not believe that Kahrig's left thigh was atrophied at that time. Samani testified that he also believed that there was no atrophy before Penn's surgery because Kahrig's friends and coworkers had not noticed it, Kahrig was functioning perfectly well except for some anterior knee pain, and neither the referring physician nor the EMG technician had noted any atrophy. Samani testified, however, that he had no evidence with which to dispute Penn's testimony that he had measured Kahrig's thighs and found a five-centimeter difference between them.

¶ 22 Samani did not believe that Penn had conducted a physical examination of Kahrig's knee during the initial appointment because Penn failed to record any examination in his office notes. Samani testified that he reviewed the surgical records of the lateral release Penn had performed. He asserted that Penn cut "higher into the lateralis tendon or where the muscle attaches to the upper outer edge of the kneecap." Samani testified that Penn had violated the standard of care because there were no records showing that Penn had performed any of the necessary physical examinations

of Kahrig's knee before the lateral release. He also testified that Penn should have but did not obtain X-ray evidence and CT scans before the surgery, which was another deviation from the standard of care. Samani testified that Penn did not have the proper preoperative indications to allow him to proceed with a lateral release. He indicated that Penn should have had preoperative studies from CT scans or MRIs or both before the surgery in addition to his findings during the surgery. From Samani's review of the records, he did not agree with Penn's assessment that Kahrig had a tight lateral retinaculum but, instead, thought that he had "chondromalacia of the patella from overloading." Samani testified that Penn should have been honest with Kahrig that he was limited in how much he could help Kahrig with this condition. He opined that Penn did not rely on other, less invasive treatments, such as rest, modifying Kahrig's activities, and giving him shots and pills, as long as he should have before resorting to surgery.

¶ 23 Samani testified that Penn should not have had the tourniquet inflated during the lateral release procedure because it likely gave him "a false impression of the position of the kneecap relative to the femur." He testified that the use of a tourniquet during a lateral release also "occludes the blood vessels of the artery" that are typically cut during a lateral release. He asserted that if those blood vessels are cut while the tourniquet is inflated, the surgeon might close the wound with bleeding into the knee and "up into the thigh."

¶ 24 Penn disagreed with Samani's assertion that it was improper for him to use a tourniquet during the surgery when deciding to perform the lateral release. Penn asserted that using an inflated tourniquet during the surgery did not result in a false positive reading for the necessity of the lateral release. Penn stated that Kahrig had a condition known as patellar tilt, for which the proper remedy is to perform a lateral

release. He opined that he had properly diagnosed the patellar tilt during the arthroscopy with the tourniquet inflated because the tilt was due to a tight lateral retinaculum, which was not affected by the use of a tourniquet. Penn testified that when a person has a "low grade cartilage injury" like that found in Kahrig, "a lateral release is helpful."

¶ 25 Samani testified that he reviewed the MRI of Kahrig's knee taken after Penn's surgery. He stated that he agreed with the radiologist's interpretation that the MRI showed a "prominent partial tear or possible complete tear of the vastus lateralis muscle from the lateral patellar retinaculum with prominent adjacent edema." He opined that cutting into the muscle was below the standard of care. He acknowledged that Penn had noted left anterior knee pain of uncertain etiology before the surgery and that he had found a cartilage blister during the surgery. He agreed that Lehman's operative notes indicated that he had sutured the tendon, not the muscle, to Kahrig's patella during his surgery. He also acknowledged that most people require from 6 to 12 months to recover after a lateral release but that Lehman had done the surgery to repair the lateral release only 3 months after Penn's surgery.

¶ 26 Samani testified that the most likely reason for the atrophy of Kahrig's left thigh after Penn's surgery was that Kahrig developed a compartment syndrome that Penn did not diagnose or treat. He opined that the physical therapy that Penn ordered for Kahrig had no chance to help him recover since Penn either had improperly detached the muscle and tendon from Kahrig's patella or had failed to diagnose and treat the compartment syndrome.

¶ 27 ISW Orthopedics' expert witness, Ritchie, an orthopedic surgeon, opined that all of Penn's care and treatment of Kahrig complied with the applicable standard of care for an orthopedic surgeon. He testified that Penn had done "a very thorough pre-

operative workup" that had included taking a history and conducting a physical examination. The physical examination revealed a "fairly global atrophy of the quadriceps tendon," which Penn had noted both visually and by measurement. He testified that Penn had "rightly ordered" an EMG to look for neurological problems. When the EMG did not show any nerve damage, Penn ordered an MRI, the results of which were "inconclusive." Penn then ordered an injection. Ritchie testified that these conservative preoperative treatments were "the best way to start." When none of the conservative approaches helped, he agreed that it was proper to proceed with the arthroscopy.

¶ 28 Ritchie described the arthroscopy as "the best diagnostic tool" because many knee problems cannot be detected with a CT scan or an MRI. Ritchie reviewed the consent form Kahrig signed before the arthroscopy and testified that it was a standard consent form "in line with consent forms across the country." Ritchie testified that it was "absolutely" within the standard of care to have proceeded with the left knee diagnostic arthroscopy after Kahrig signed the "proceed as indicated" consent form. Ritchie testified in detail about Penn's surgery, noting that Penn had found a tilt in Kahrig's patella, which he released "in a standard fashion" using a cauterizing device to prevent a lot of the bleeding that would otherwise occur. Ritchie opined that it was appropriate for Penn to do the lateral release procedure because it reduced the pressure on the knee, slowed the progression of his pain and other symptoms, and corrected the problem of the tilt of Kahrig's patella. Using Penn's interoperative photographs, Ritchie pointed out a lesion or blister and testified that the lateral release Penn performed was "an appropriate step to take to try to unload the kneecap on to that area where the cartilage is being rubbed a little more than it should."

¶ 29 Ritchie disagreed with Samani's opinion that Kahrig might have developed a

compartment syndrome in his thigh after Penn's surgery. He explained that compartment syndrome is a "rare complication of arthroscopic procedures." He testified that he had never heard of one occurring in a person's thigh and stated that they always occur in a person's calf region because they involve blood pooling. According to Ritchie, the blood could not defy gravity and travel up the leg to Kahrig's thigh. Additionally, a compartment syndrome is a "tremendously bad problem," and none of Kahrig's documented symptoms came "anywhere close to showing a compartment syndrome." Ritchie expressed the opinion that the symptoms Kahrig experienced after Penn's surgery were most likely due to hemarthrosis, which is blood filling the knee cavity, a common complication of arthroscopic surgery. Ritchie testified that, if Kahrig developed postoperative hemarthrosis, that condition did not indicate that Penn's surgery was below the standard of care. Ritchie reviewed Penn's postoperative records and the physical therapist's notes and concluded that all of Penn's care, through Kahrig's final visit with him, complied with the standard of care.

¶ 30 Ritchie read the MRI report Lehman had ordered after Penn's surgery, and he viewed the film himself. He disagreed with the radiologist's conclusion that the MRI showed a tear of the vastus lateralis muscle. From his review of the MRI, Ritchie concluded that it showed a release of the lateral retinaculum and no hemorrhage but more swelling than was preferable. Ritchie testified that Lehman's MRI did not indicate anything other than changes that should be expected after a lateral release. Ritchie opined that because Lehman performed his surgery to undo Penn's lateral release before that procedure had a chance to heal, the lateral release had no chance to either fail or work.

¶ 31 Ritchie did not agree with Samani that Penn was required to make the decision

to do the lateral release before the arthroscopy. He acknowledged, however, that if Penn had made the decision to do the lateral release during the surgery with the tourniquet inflated, he might have had a false positive for the condition of patellar tilt. Ritchie testified that it was appropriate for Penn to do the lateral release even if he had not found patellar tilt during the arthroscopy. He testified, however, that the lateral release might have been unnecessary, but he qualified his answer by stating that this would be true only if Penn had not found the cartilage blister and had only found a patellar tilt during the arthroscopy while the tourniquet was inflated. Kahrig's attorney impeached Ritchie with his deposition testimony in which he did not qualify his answer in any way but simply stated that Penn could have performed an unnecessary surgery.

¶ 32 After all of the evidence was presented, the jury returned a verdict in favor of ISW Orthopedics. The trial court subsequently denied Kahrig's posttrial motion. This appeal followed.

¶ 33 We note that defense counsel argues in the appellee brief that we should dismiss this appeal or, at a minimum, strike the portions of Kahrig's brief that refer to matters outside the record on appeal. We agree with defense counsel that there are several such improper references in Kahrig's brief. References to matters outside the record on appeal are not allowed. See Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). We have disregarded all such references, and they form no part of our decision.

¶ 34 ANALYSIS

¶ 35 Kahrig first argues that the jury's verdict is against the manifest weight of the evidence. Kahrig asserts that the evidence at trial established that Penn's care and treatment fell below the proper standard of care in three ways: (1) he performed the lateral release without a proper preoperative examination or surgical indications; (2)

he used a tourniquet during the arthroscopy; and (3) he severed Kahrig's tendon and muscle during the surgery.

¶ 36 When considering whether a verdict is contrary to the manifest weight of the evidence, the court must view the evidence in the light most favorable to the appellee. *Cummings v. Jha*, 394 Ill. App. 3d 439, 451 (2009). "Unquestionably, it is the province of the jury to resolve conflicts in the evidence, to pass upon the credibility of the witnesses, and to decide what weight should be given to the witnesses' testimony." *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992). On review, the court should not usurp the function of the jury and substitute its judgment on issues of fact "fairly submitted, tried, and determined from the evidence which did not greatly preponderate either way." *Maple*, 151 Ill. 2d at 452-53. A verdict is against the manifest weight of the evidence only if it is palpably erroneous, wholly unwarranted, clearly the result of passion or prejudice, or appears to be arbitrary, unreasonable, and not based on the evidence. *Cummings*, 394 Ill. App. 3d at 451.

¶ 37 In a medical negligence case, it is the plaintiff's burden to prove: "(1) the proper standard of care against which the defendant's conduct is measured; (2) an unskilled or negligent failure to comply with the applicable standard; and (3) a resulting injury proximately caused by the defendant's want of skill or care." *Petre v. Cardiovascular Consultants, S.C.*, 373 Ill. App. 3d 929, 939 (2007). Each element of a medical negligence case must be presented by expert testimony. *Cummings*, 394 Ill. App. 3d at 451. The issues of whether the defendant has deviated from the standard of care and whether that deviation was a proximate cause of the plaintiff's injuries are normally questions of fact for the jury to decide. *Cummings*, 394 Ill. App. 3d at 451.

¶ 38 On the issue of whether Penn performed a proper preoperative examination and

had sufficient surgical indications to go forward with the lateral release, Penn testified that he conducted a physical examination of Kahrig's leg and found that he had good static strength, range of motion, and stability in his ligament structures and that "he really didn't have much irritability in the knee." Penn measured Kahrig's thighs after he noticed a discrepancy in their size. The results of the physical examination led Penn to think that nerve damage was the most likely reason for the atrophy of Kahrig's left thigh. When the EMG test indicated no nerve damage, Penn ordered an MRI. When the MRI was not conclusive and an injection did not help, Penn suggested and Kahrig agreed to diagnostic arthroscopy during which Penn was to "proceed as indicated," depending on what Penn learned during that surgery.

¶ 39 Ritchie described Penn's preoperative "workup" as "very thorough." He testified that the examination, EMG, MRI, and injection were conservative care that was the "best way" for Penn to begin analyzing Kahrig's problems and how to help him. Ritchie described arthroscopic surgery as the best diagnostic tool in this circumstance because many knee problems cannot be detected with a CT scan or an MRI. Although Ritchie was impeached with his deposition testimony, at trial he testified that it was appropriate for Penn to do the lateral release procedure because it reduced the pressure on the knee and slowed the progression of his pain and other symptoms. He testified that the lateral release corrected the problem of the tilt of Kahrig's patella. Using Penn's interoperative photographs, Ritchie pointed out a lesion or blister and testified that the lateral release Penn performed was "an appropriate step" to decrease the strain on the knee that had caused the blister. Ritchie did not agree with Samani that it was necessary for Penn to make the decision to do the lateral release before the arthroscopy.

¶ 40 There was ample evidence from which the jury could determine that Penn

acted within the appropriate standard of care in his treatment of Kahrig leading up to his surgery. Penn and Ritchie both gave extensive expert opinion testimony to refute Samani's contrary opinion that Penn had not met the standard of care in treating Kahrig preoperatively. The jury chose to believe Penn's and Ritchie's testimony, a decision that is not against the manifest weight of the evidence.

¶ 41 Kahrig next argues that the evidence at the trial demonstrated that Penn's use of an inflated tourniquet during the arthroscopy, when he made the decision to perform the lateral release, was below the applicable standard of care. We disagree. Samani testified that he did not think a reasonably prudent orthopedic surgeon would have a tourniquet in place and inflated during the lateral release procedure. He explained that the inflated tourniquet would give a "false impression of the position of the kneecap relative to the femur." Penn disagreed with Samani's opinion that the use of a tourniquet during the lateral release was improper. He testified that the use of an inflated tourniquet during the surgery did not result in a false positive reading for the necessity of the lateral release. He testified that Kahrig had a condition known as patellar tilt, for which the proper remedy is to perform a lateral release.

¶ 42 Ritchie testified that Penn had properly diagnosed the patellar tilt during the arthroscopy with the tourniquet inflated because the tilt was caused by a tight lateral retinaculum, which was not affected by the use of a tourniquet. On cross-examination, Ritchie testified that he does not use a tourniquet during an arthroscopic surgery when assessing patellar tilt and that the inflated tourniquet could have resulted in a false positive reading for the condition of patellar tilt. However, he modified that statement by adding that Penn had properly performed the lateral release due to his finding during the arthroscopy that Kahrig had a tight lateral retinaculum that was the likely cause of the lesion or blister on his knee and for which the lateral release would

provide some relief. Therefore, Ritchie's testimony that Penn's use of a tourniquet could have resulted in a false positive and an unnecessary surgery was equivocal. That portion of his testimony alone does not outweigh the rest of the evidence from which the jury could easily determine that Penn had not violated the appropriate standard of care by using a tourniquet. Any conflict in the evidence between Samani's testimony and that of Penn and Ritchie was solely for the jury to resolve, which it clearly did by entering a verdict in favor of ISW Orthopedics.

¶ 43 Kahrig argues that Penn improperly performed the lateral release by cutting or tearing Kahrig's vastus lateralis tendon and muscle. He argues that Penn's incision went into the muscle, causing permanent injury to his left quadriceps muscle. He claims that the evidence presented to the jury established that fact because Samani testified that, in his review of Lehman's surgical notes, Lehman found that Kahrig's tendons were completely detached from his knee and that he sutured the tendons to the patella to repair that problem. Additionally, a treating physician, Dr. John Tessier, who examined Kahrig in 2008, testified that he believed there was a tear in Kahrig's patellar tendon that extended several inches into his thigh muscle. However, Tessier also testified that he had reviewed Penn's operative notes and did not find any problems with that surgery. He testified that his "whole impression of the portion of the surgery with regard to [Kahrig's] patellofemoral joint, that's pretty standard care."

¶ 44 Penn testified in detail that he had performed the lateral release in a standard fashion, that he had not cut into the muscle, and that he had followed the generally accepted procedure outlined in the relevant medical literature, including one of the textbooks relied upon by Kahrig's attorney and his expert witness Samani. Penn showed the jury the MRI films taken before and after his surgery and explained that

the MRI taken after his surgery showed no violation of the muscle. Penn testified that the MRI taken after his surgery showed precisely what he had expected to see after a normal lateral release. Ritchie also described the MRI taken after Penn's surgery as consistent with what he would expect to see following a normal lateral release. Ritchie testified that the MRI indicated that Penn had performed the lateral release within the standard of care. As the jury had conflicting evidence on the issue of whether Penn improperly cut Kahrig's muscle during the lateral release, we find that its verdict in favor of Penn was not against the manifest weight of the evidence.

¶ 45 Kahrig next argues that defense counsel's improper question about whether Kahrig had purchased a $300,000 boat amounted to reversible error. The party asserting that a trial error is reversible must provide a clear showing of how he was prejudiced. *Schaffner v. Chicago & North Western Transportation Co.*, 161 Ill. App. 3d 742, 754 (1987). Here, the trial court sustained Kahrig's objection to the question and agreed that the question was "ridiculous." Kahrig does not show how this single, improper question denied him a fair trial; therefore, any error is harmless. Moreover, he does not indicate how this particular question, which was improper but which went to the issue of damages, could possibly have affected the jury's determination of liability. Since the jury ruled in favor of the defendant, it found no liability on the part of ISW Orthopedics. The jury never reached the issue of damages, and the improper question was wholly irrelevant to its determination of liability. Therefore, we find no basis for overturning the jury's verdict due to one improper cross-examination question for which Kahrig shows no prejudice.

¶ 46 CONCLUSION

¶ 47 For all the reasons stated, we affirm the judgment of the trial court.

¶ 48 Affirmed.

¶ 49 JUSTICE GOLDENHERSH, specially concurring.

¶ 50 I concur with the majority's result in this appeal. My purpose in this special concurrence is to note my position that counsel's question concerning purchase of the boat was so prejudicial as to justify reversal had inadequate damages been awarded. However, since the jury found for the defendant on liability, we appropriately need not reach this question. Additionally, I do not imply any criticism of the circuit judge or plaintiff's counsel as to their responses to the question.

¶ 51 Based on the above, I specially concur.