

No. 1-11-2735

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICK STERNA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 06 L 7738
)	
CSX TRANSPORTATION, INC.,)	Honorable
)	James D. Egan,
Defendant-Appellee.)	Judge Presiding.
)	

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Salone and Justice Neville concurred in the judgment.

ORDER

Held: The circuit court did not err in granting a railroad employer's motion for directed verdict where plaintiff failed to present evidence establishing that the employer's practice of allowing employees to mount and dismount moving equipment was negligent under the Federal Employers Liability Act. The circuit court did not abuse its discretion in excluding from evidence documents that an expert reviewed, but did not rely upon, in formulating his causation opinion. Because the jury found in favor of the employer on the issue of liability, this court need not address plaintiff's claim of errors regarding damages.

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Plaintiff Rick Sterna appeals the circuit court's granting of defendant CSX Transportation, Inc.'s (CSX) motion for directed verdict regarding his claim that CSX was negligent by failing to provide him with a safe method of performing his job functions because it allowed him to mount and dismount moving equipment. Sterna claims that he presented evidence supporting his allegation that the mounting and dismounting of moving equipment was dangerous and that he suffers from permanent injuries as a result of engaging in that practice during his employment with CSX. Also, Sterna claims that the circuit court abused its discretion in prohibiting an expert from disclosing the contents of documents that he reviewed in formulating his causation opinion. Sterna further claims that the circuit court abused its discretion by limiting damages evidence to include only the loss of income during winter months and prohibiting an instruction addressing damages resulting from disability. For the reasons that follow, we affirm.

BACKGROUND

CSX's business consists of providing railroad common carrier services. CSX employed Sterna as a conductor/switchman/brakeman and he worked in and around the barr yard located in Cook County, Illinois.

Sterna filed a complaint on July 24, 2006, filed a first amended complaint on October 30, 2006 and a second amended complaint on April 24, 2009. In the second amended complaint, Sterna alleged that because of his employment position with CSX and its negligence, he experienced long term cumulative trauma causing injuries to his feet, knees and ankles. Sterna specifically alleged that during his employment, CSX negligently and carelessly: (1) failed to provide him with a reasonably safe place to work by requiring him to get on and off of moving

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equipment onto ballast that was not suited for yard use; (2) failed to provide him with reasonably safe methods of performing his work by requiring him to get on and off of moving equipment and onto ballast that was not suited for yard use; (3) failed to provide him with proper footwear to perform his job duties to prevent lower extremity injuries; (4) failed to provide him with proper supervision, direction and instruction regarding cumulative trauma, and its affect on the body; (5) failed to warn of the risks of developing cumulative trauma injuries; and (6) failed to employ sufficient number of employees to perform the work as assigned to him. Sterna's case proceeded to a jury trial.

Sterna testified at trial that he began working for CSX's predecessor on September 13, 1969, as a switchman at barr yard. Sterna stated that he did not receive any training before he started working on the tracks and he did not view the safety video before viewing it at trial. Instead, he learned how to perform his job by watching and observing the other members of the crew. When Sterna began working for the railroad, he was required to get on and off of moving equipment and learned how to do so by watching how other people did it. Sterna continued to get on and off of moving equipment until 1990, when CSX prohibited the practice of doing so.

Sterna stated that a switchman was responsible for throwing the switch of a railcar after it was lined up on the assigned track. A switch has an "arm" or a lever on it that is physically turned to move the rails from one point to another allowing the train to move onto a different track. A signal known as a "kick" is given to the engineer to increase the train's speed and once the train's speed increases, the "arm" is pulled, the "knuckle" on the train is opened and the railcar is released. After that step, the switchman waits for the railcar to stop moving on the assigned

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track, and the process is repeated with the next railcar until all of the railcars are moved to the respective track. On occasion, the switchman would mount the railcar after it was released from the "knuckle" and ride the railcar to the next switch, which eliminated the need to walk to that location or reduced the distance that needed to be walked.

To mount a moving railcar for purposes of reaching a different location, an individual would have to run to catch up with the railcar, mount it and ride it to the desired location. Once at that location, the individual would then dismount the railcar and "throw" the switch. This action was repeated all day.

Sterna described the walking conditions in the railroad yard during the 1970s as "bad" because it was "muddy, no uniformity, ballast conditions were whatever they had on hand, lighting was bad, very uneven and a lot of weed problems too." The walkway lacked uniformity because the stones on it were different sizes and different colors. The walking conditions in the yard did not change in the 1980s from the 1970s. When Sterna worked on yard jobs, he was on his feet a minimum of five to six hours each day.

In the 1990s, Sterna worked primarily on industry jobs. For industry jobs, the mounting and dismounting of moving equipment required an individual to make the "cut" on a railcar, secure the hand brake on the main line, mount the railcar, pull out, ride the railcar into the industry and pull the switch in any way that lined up best. The train's engineer determined the train's speed, which was either fast, slow or in the middle. When Sterna worked on industry jobs, he was on his feet approximately four or five hours a day.

Between approximately 1995 and 1998, Sterna served on CSX's safety committee.

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During that time, the walking conditions of the barr yard were addressed, which included the larger ballast in the yard, uneven ballast, uneven terrain and the flooding problem. The rocks at the barr yard were in a variety of sizes, colors and type, and Sterna testified that he previously sprained his ankle because of the inconsistency in the rocks.

In July of 2003, Sterna started experiencing arch problems in his right foot, which felt like he had a rock in his shoe. He saw Dr. Wapiennik, a podiatric physician, for an exam, who recommended surgery on Sterna's right foot and preformed the procedure. After the surgery on his right foot, Sterna started experiencing problems with his left foot, which had a bone chip in the big toe. Sterna told Dr. Wapiennik that he had a motorcycle accident in the 1970s, which may have caused a problem with his foot because he felt pain while walking normally and when he got up and down at work. Sterna had surgery to remove the bone chip, and to remove the right fibroma. He also developed multiple fibromas or sensations in the arch of his left foot.

In late 2008, Sterna started developing problems with his right knee, which ultimately caused him to have surgery on that knee. Sterna takes the prescription pain medicine Arthrotec, which was originally prescribed by Dr. Wapiennik. Sterna was off of work for six weeks each time following the surgery on his right foot, after removal of the bone chip in his left foot and after his right knee surgery. At the time of his deposition, he was pain free in his right foot from the fibromas, pain free from the bone chip removal, but experienced pain in his left foot from the fibroma and in his right knee even after arthroscopic surgery. He feels more pain when he walks on the railroad rocks than on flat surfaces.

During the wintertime, CSX required Sterna to wear spikes on his boots, which caused

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him arch pain and right knee pain when he walked. This pain caused him to see Dr. Klepsch, an orthopedic surgeon, who wrote a note indicating that the spikes on the boots created traction causing an aggravation of his right knee arthritis and his left knee pain. According to Dr. Klepsch, the traction torques his knee unnecessarily and increases his pain. He opined that Sterna would benefit from wearing another type of boot or shoe to lessen the traction.

On January 28, 2011, while Sterna was working on the railroad, CSX's assistant superintendent and his replacement, Curt Miles, told him that the new division manager and the medical department insisted that he leave the property. Sterna complied and has not returned to work at the railroad. CSX's medical department later informed Sterna's wife that the winter boot restriction was lifted and that he would be required to contact the medical department. Sterna indicated that he cannot return to work due to the knee pain, and he cannot even perform a flagging job because that requires him walking up and down on the main line ballast and clearing areas.

During cross-examination, Sterna acknowledged that he received on-the-job training by observing, watching, and seeing what the other crews did in the railroad yard. Sterna requested a referral to see Dr. Wapiennik because he felt pain all over, including in his feet. When he saw Dr. Wapiennik in July 2003, he told him that his feet had bothered him for some years before seeing him. Sterna also acknowledged that he was able to get on and off of moving equipment safely, as well as stopped equipment. He still mounted and dismounted moving equipment after the rule changed in January 1990, which prohibited the practice of mounting and dismounting of moving equipment.

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Albert Fritts testified that during his employment with CSX and its predecessor, he was primarily responsible for employee and public safety. More specifically, he had knowledge of and overall responsibility for the safety programs of CSX and its predecessor. Fritts stated that all employees received a copy of the safety rule book, and they received training on the rules when first hired and periodically throughout their career. Additionally, conductors and trainmen must go through annual testing, known as "safety certification." During the certification, employees received study guides or they would perform exercises on a computer to become familiar with any rule changes during the year and rules that the railroad felt employees needed to better understand. After the study preparation, the employees would be tested on the rules. To determine whether employees were adhering to the safety rules, CSX performed efficiency testing, where supervisors would observe employees on a periodic basis to evaluate employee understanding and compliance with safety and operating rules.

Fritts's department was also responsible for creating safety videos, known as rail green videos, that were used to train employees. When Sterna was hired, on-the-job training led to an employee's qualification to become a trainman. Employee training also included a classroom component and the use of safety resources, such as the safety rule book, the operating rule book, the hazardous material guide and the signal rule book. A field training component also existed requiring an employee to participate in a process referred to as "cubbing," where an inexperienced employee worked with an experienced crew member and learned the job from that crew member. Employees were tested to determine their competency and knowledge of rules and operating practices.

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Employees also participated in suggesting or approving personal protective equipment. If the safety committee wanted to require use of a piece of personal protective equipment, the committee solicited the input of employees who would be using the equipment addressing the suitability of the equipment, effectiveness at guarding against identified potential hazards, comfort of the equipment and its durability. A formalized committee met periodically to oversee the evaluation and testing of the equipment. Pilot programs were also established where the employees would test the equipment and then complete surveys about the equipment. Based on the employees' use and evaluation of the equipment, the committee would make a decision about whether the equipment was a suitable piece of equipment to add as a standard item for the railroad, and whether to feature the item in the personal protective equipment catalog. Based on past evaluations, CSX required specialized footwear in snowy climates.

CSX conducted safety and job briefings, and an employee was required to participate in those briefings before starting a job. The purpose of the briefings was to require the employees who would be performing the job to discuss the activities required by the job and identify the responsibilities of each of the employees to ensure that everyone was on the same page regarding job duties. If an employee was working on a job independently, he was required to perform a self-job briefing. An employee was also responsible for obtaining all of the applicable job information, being properly attired, being aware of any special weather conditions, communicating with the proper individuals and inspecting any applicable equipment.

In the 1980s, CSX introduced a safe job procedural manual, which detailed a specific job step-by-step discussing the applicable safety rules, required personal protective equipment and

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the proper way to perform the job, including hand, body and foot positioning. The purpose of the manual was to create a training tool demonstrating the safest way to perform a job, and to identify job hazards and how to perform a job in spite of the identified hazards. Employees received the rule book along with the applicable safe job procedural manual. This manual existed when Sterna worked for CSX and it applied to him. The manual included a safe job procedure for the mounting and dismounting of a moving railroad car. According to Fritts, before employees were allowed to mount or dismount moving equipment, they were required to participate in training targeted at that skill. As part of the training, the employees were shown and taught the proper way to mount and dismount moving equipment and they were required to demonstrate their ability to do that task safely. Employees also received refresher training and participated in the efficiency test program, wherein supervisors observed employees doing things like mounting and dismounting of moving equipment to ensure they are doing it safely.

The safe job procedural manual outlines in detail the procedure to mount and dismount moving equipment, which included checking ground conditions, selecting the appropriate equipment and ensuring that train speed is reduced to a speed that would "be safe for you to mount it." The procedure also addresses hand placement on the equipment, foot placement, and selecting the proper foot to mount. For instance, when mounting or dismounting a railroad car, the trailing foot is always used, and the railroad car should be mounted at the trailing end as opposed to mounting between two cars to prevent the risk of falling between two railroad cars. These procedures were also incorporated in the rail green video, and the safety rule book contains pictures of the proper body and hand positions to mount and dismount moving equipment. The

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safety handbook became effective on January 1, 1990. Also on that date, the mounting and dismounting of moving equipment was no longer permitted, unless in an emergency or otherwise provided by special instruction.

The rule change in 1990 that prohibited the mounting and dismounting of moving equipment was initiated by CSX's new operating vice president, Jerry Davis. He acquired a reputation of being committed to safety, heavily involved with safety, personally committed to safety, and someone trying to introduce change and energy to CSX's safety program. Davis suggested to the system safety committee that it prohibit the mounting and dismounting of moving equipment, which he believed would communicate to the employees that safety is important. An employee who continued to mount or dismount moving equipment after the rule change would be violating a safety rule.

Fritts did not believe that the rule change prohibiting the mounting and dismounting of moving equipment indicated that it was unsafe to do that task. However, if an individual failed to properly execute one of the steps required to mount or dismount moving equipment, then Fritts acknowledged that a risk of injury existed. Fritts recounted the safe job procedures relating to the mounting and dismounting of moving equipment, and the associated hazards. To mount moving equipment, the first step is to look and listen for moving equipment, and the hazard is the moving equipment itself. The second step is to assume stance, and the hazard is slipping or tripping on ballast or a foreign object, adjacent structures and/or equipment and moving equipment. The third step is to face the railroad car to be mounted, and the potential hazard is the loss of balance. The fourth step is to grab the irons/ladder rung on the side of the equipment,

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and the associated hazard is the loss of grip. The manual further stated: "Do not attempt to mount a car moving over six miles per hour." Fritts stated that most people know from personal experiences that if they moved faster than six miles per hour, they would be sprinting and not moving at a walking speed. Fritts also stated that employees are taught to mount a railcar at a safe speed and not to run on the railroad. He expected a railroad worker to mount a railcar safely, and that the employee knows what safely is for him. The notes to the manual also required employees to "Take necessary precaution to avoid any hazardous conditions resulting from inclement weather" and "Nighttime operations require the exercise of extra care in the use of adequate light."

To dismount moving equipment, Fritts stated that the first step is to check the stirrup for secure footing, and the related risk is slipping or tripping. The second step is to "take stance on stirrup" and the risk is slipping or tripping. The third step is to "look out for moving equipment and obstructions" and the risk is moving equipment or obstructions. The fourth step is to "Check ground for secure footing" and the hazard is the loss of balance. The fifth step is to "step down" and the hazard is the loss of balance and slip and trip or slip or trip on the tie, ballast or foreign object. The speed to dismount is six miles per hour. The final step is to "step down."

In the 1990 safety handbook, Rule 825 states: "Getting on or off moving equipment or cars prohibited except where otherwise specified by special instructions or in case of emergency." The rule continued by stating that:

"By following safe procedures, getting on and off equipment can be safe and natural as walking. The letters of one word may help you to remember the principles of

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getting on or off equipment. That word is safety and it stand for the following: S equals speed. * * * Speed is an all-important factor in getting on or off moving equipment safely. Never attempt to mount or dismount if speed is excessive for you."

The rule regarding mounting and dismounting of moving equipment when Sterna worked for the railroad was that it must be done at a safe speed. When Sterna was hired in 1969, the safety rule book existed and was applicable, as well as a personal protective equipment catalog, but the job briefings program was not in existence.

Dr. Larry Wapiennik, a podiatric physician, testified that he examined Sterna because he complained of foot pain, as well as a lump to the bottom of his right foot. Sterna informed him that his foot pain has been bothersome for years because he is on his feet for long hours at work and on uneven surfaces. During his treatment of Sterna, he stated to Dr. Wapiennik that he thinks his condition is worsened by the fact that he walks on uneven surfaces and on large rocks at work. Dr. Wapiennik wrote the following on a prescription form in November 2007: "Please allow patient to remove winter safety boots with traction devices as needed due to aggravating a chronic painful foot condition to both feet." He wrote the note because the boots that Sterna was required to wear were oriented in a way that put pressure on the painful areas of Sterna's plantar fibromas. Dr. Wapiennik opined that the diagnoses for which he was treating Sterna can be made symptomatic by his line of work, which included walking on uneven ground and large rocks. Dr. Wapiennik referred Sterna to Dr. Frederick Klepsch, an orthopedic surgeon, to examine Sterna regarding the pain in his left ankle, right knee and left finger.

Dr. Klepsch saw Sterna for an orthopedic consultation following Dr. Wapiennik's referral.

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During the examination, Sterna complained of right knee pain, left ankle pain and the metacarpophalangeal joint of the left long finger was bothering him. In his notes, Dr. Klepsch documented that Sterna worked as a railroad conductor for 40 years and did a lot of walking on uneven ground and rocks, and jumped on and off of trains for several years. Based on his examination and an x-ray, Dr. Klepsch believed that Sterna had osteoarthritis, but may have also had medial meniscal pathology. Dr. Klepsch ordered an MRI, the results of which suggested a torn medial meniscus and possibly a tear of the lateral meniscus, as well as osteoarthritis. Medial meniscus operate as shock-absorbing pads or washers between two bones and tend to stabilize the knee and ligaments. Sterna likely tore the medial meniscus due to the wear and tear on his knee over the years.

Dr. Klepsch provided Sterna a note written on a prescription form stating:

"To whom it may concern,

Mr. Stern is required to wear a rubber boot with metal studs or spikes on the sole.

Because of the traction that they create he is having aggravation of his right knee and arthritis and even left knee pain. The traction torques his knees unnecessarily and increases his pain. He would benefit from wearing another type of boot or shoe to lessen the traction. Call me if there are any questions."

Sterna showed Dr. Klepsch the boots that CSX required him to wear in snowy and icy conditions. Dr. Klepsch stated that the boot gripped the ground tightly and any twisting motion would create painful torquing of the knees. Dr. Klepsch's prognosis regarding Sterna's right knee is that the arthritis would worsen and he would need a total knee replacement.

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Dr. Klepsch reviewed information provided to him regarding Sterna's job duties and duties of a trainman/switchman, as well as photographs of the yard that Sterna worked in for 40 years. Dr. Klepsch opined that the work Sterna performed at the railroad contributed to cause the conditions for which he treated Sterna. Dr. Klepsch also stated that if Sterna was able to continue with the type of work that was not as demanding or less likely to cause a fall, it would be less likely he would need to wear the spiked boots that prompted his note and Sterna probably could extend his work career and he would endure less pain everyday. Dr. Klepsch also indicated that Sterna is not totally disabled because of his condition.

On cross-examination, Dr. Klepsch stated that Sterna informed him that his job required him to jump off of equipment. He was not aware that CSX prohibited the jumping on and off of moving equipment as of January 1, 1990. Dr. Klepsch could not state with any reasonable degree of medical certainty that the condition that he evaluated Sterna for in 2009 related to the practice of mounting and dismounting of moving equipment given that CSX prohibited that task since 1990. Dr. Klepsch also indicated that the letter he provided to Sterna does not state that he is not physically capable of doing other jobs on the railroad nor did the letter medically disqualify him from any position at the railroad.

Dr. Klepsch clarified that he reviewed the documents relating to Sterna's job responsibilities provided to him, but he did not specifically rely on that information in forming his conclusions. Those documents, however, did further support the opinions that he gave throughout his testimony.

On March 16, 2011, following the close of Sterna's case, CSX filed a motion for directed

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verdict regarding Sterna's claims that it acted negligently by failing to provide a reasonably safe railroad workplace and that the previously authorized practice of mounting and dismounting of moving equipment was not reasonably safe.

The circuit court denied CSX's motion for directed verdict regarding its negligence in maintaining the yard conditions finding that Sterna presented enough evidence through his own testimony that a question of fact for the jury existed. Regarding the negligence claim associated with the mounting and dismounting of moving equipment, the circuit court held that Sterna failed to show that getting on or off of moving equipment was an unsafe practice, *per se*.

CSX filed a motion *in limine* to exclude from evidence the documents that Dr. Klepsch reviewed but did not rely upon to formulate his causation opinions. The circuit court granted the motion because Dr. Klepsch testified that he reviewed the materials but did not actually place any reliance upon them.

Sterna proposed a jury instruction addressing future disability damages. The circuit court rejected this instruction because testimony was presented that Sterna was not disabled. Sterna also proposed an instruction addressing lost future wages. The circuit court limited lost future wages to the time period where he was required to wear snow boots because testimony indicated that it was painful for him to wear those boots and he could not perform his job or even the flagger's job with the boots. Following deliberations, the jury found in favor of CSX. The circuit court denied Sterna's motion for a new trial. Sterna timely filed this appeal.

ANALYSIS

Sterna first contends that the circuit court erred in granting CSX's motion for a directed

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verdict regarding his claim that CSX's practice of allowing employees to get on and off of moving equipment constituted evidence of its negligence. He claims that whether the act of mounting and dismounting moving equipment at a speed of six miles per hour amounted to a reasonably safe place to work was a question for the jury to decide, and the issue should not have been disposed of by a directed verdict.

A circuit court grants a motion for directed verdict only when all of the evidence "so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand." *Krywin v. The Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010). When reviewing a circuit court's directed verdict ruling, "all of the evidence must be construed in the light most favorable to the nonmoving party." *Id.* This court adopts a *de novo* standard of review when reviewing the circuit court's disposition of a motion for directed verdict. *Id.* Because this case brings a cause of action against a railroad, the pertinent negligence standard falls within the purview of the Federal Employers Liability Act (FELA).

The FELA states in relevant part that:

"[e]very common carrier by railroad * * * shall be liable in damages to any person suffering injury while he is employed by such carrier * * * for such injury * * * resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment." 45 U.S.C. §51 (2000).

The FELA was enacted to impose on railroads a general duty to provide a safe workplace to its

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employees. *Brzinski v. Northeast Illinois Regional Commuter R.R. Corp.*, 384 Ill. App. 3d 202, 204 (2008). A plaintiff must prove the following elements to establish a negligence cause of action under the FELA: "(1) defendant is a common carrier; (2) plaintiff was an employee of the common carrier; (3) plaintiff's injury was sustained while employed by the common carrier; and (4) defendant's negligence is the cause of the injuries." *Larson v. CSX Transportation, Inc.*, 359 Ill. App. 3d 830, 834 (2005). When bringing a negligence claim against a railroad under the FELA, the plaintiff's burden is significantly less than in a common law negligence case, and a railroad employer will be held liable where its negligence played any part, even the slightest, in producing the injury. *Brzinski*, 384 Ill. App. 3d at 204. However, a railroad employer does not become an insurer of employee safety under the FELA. *Id.* The employer is liable, though, if by some defect or insufficiency, it failed to provide an employee with a safe place to work, but it is not liable merely because injuries occurred at the yard. *Mikus v. Norfolk & Western R.R. Co.*, 312 Ill. App. 3d 11, 21 (2000).

In the case *sub judice*, Sterna failed to present sufficient evidence establishing CSX's negligence associated with the practice of allowing employees to mount and dismount moving equipment. Sterna acknowledged on cross-examination that he was able to mount and dismount moving equipment safely. Although Sterna alleges that he did not view a safety video while he worked for the railroad addressing the proper procedures to mount and dismount moving equipment, he indicated that received on-the-job training by watching more experienced crew members perform that task. In fact, even after CSX prohibited the practice of mounting and dismounting of moving equipment, Sterna did so at least once resulting in him violating a safety

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rule.

Fritts also testified extensively regarding the safety procedures that CSX and its predecessor implemented regarding the mounting and dismounting of moving equipment. CSX developed and distributed to employees a safe job procedural manual that identified the proper procedures to use to mount and dismount moving equipment, which also identified the potential hazards for each step of the process. This procedural manual depicted the relevant steps using pictures to ensure that the proper method was communicated to and understood by employees. CSX also created a safety video addressing the procedures that should be employed to mount and dismount moving equipment. Fritts further testified that before employees were allowed to mount or dismount moving equipment, CSX's safety policy required an employee to participate in training aimed at performing that task. Not only were employees shown the proper procedure to use in mounting or dismounting moving equipment, but the employees were required to demonstrate their ability to do that task safely before they were permitted to perform that function independently on the railroad track. Additionally, conductors and trainmen were required to undergo annual "safety certification," wherein those employees would receive study guides or perform exercises on the computer to familiarize themselves with the railroad's safety rules. Most significantly, neither party disputes that Sterna received on-the-job training about how to mount and dismount moving equipment. Collectively, these facts establish that CSX implemented procedures to ensure that an employee performs his job duties, including the mounting and dismounting of moving equipment, safely. Even though Sterna alleges that he did not receive the written safety material or previously view the video, his own testimony

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establishes that he was able to mount and dismount moving equipment safely and that he learned how to do so by observing other crew members.

Sterna also claims that the ground conditions surrounding the area where he would mount and dismount moving equipment contributed to his injuries and CSX's failure to maintain the yard in a safe condition establishes CSX's negligence. The record reveals that the circuit court denied CSX's directed verdict motion addressing the working conditions of the yard, which allowed the jury to hear evidence and deliberate on that issue. The condition of the yard, however, is an issue separate and distinct from the isolated issue of whether CSX was negligent by allowing employees to mount and dismount moving equipment in an unsafe manner or without proper training. The actual act of mounting and dismounting of moving equipment formed the basis of the negligent act at issue here, and not the conditions of the yard when an employee mounted or dismounted the moving equipment. The unsafe yard allegation survived a motion for a directed verdict and was considered by the jury. Thus, we reject Sterna's contention that the yard condition should be considered in conjunction with the mounting and dismounting of moving equipment issue and serves as a basis to find CSX negligent on the mounting and dismount claim for negligence.

Viewing this evidence in a light most favorable to Sterna, we cannot conclude that he met the lowered threshold of establishing negligence relating to the mounting and dismounting of moving equipment under the FELA. Accordingly, the circuit court did err in granting CSX's motion for directed verdict.

Next on appeal, Sterna claims that the circuit court abused its discretion in excluding

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testimony relating to the job responsibility documents that Dr. Klepsch relied upon to formulate his causation opinion. These documents included a job analysis summary for a trainman/switchman, photograph of the railroad ballast, a railroad industry study addressing the effects of getting on and off of moving equipment on the lower extremity, Sterna's affidavit describing his job functions, and portions of Sterna's deposition. Sterna claims that because this evidence was excluded, the jury was unable to appreciate the depth of Dr. Klepsch's understanding of Sterna's job duties.

We review a circuit court's ruling regarding the admission of evidence for an abuse of discretion. *People v. Santiago*, 409 Ill. App. 3d 927, 931 (2011). A circuit court abuses its discretion "where the trial court's decision is arbitrary, fanciful or unreasonable or where no reasonable person would agree with the position adopted by the trial court." *People v. Becker*, 239 Ill. 2d 215, 234 (2010).

The general rule is that even though reports not prepared by the expert witness are substantively inadmissible, the expert may nonetheless use them to form his opinion provided that experts in the field reasonably rely on the materials. *People v. Anderson*, 113 Ill. 2d 1, 7 (1986); see also *People v. Lang*, 113 Ill. 2d 407, 464 (1986). When offering his opinion, the expert may refer to the contents of the materials that he relied upon in formulating his conclusions because if he were not allowed to do so, then it would appear that the expert based his opinion on "reasons that are flimsy and inconclusive when in fact they may not be." *Anderson*, 113 Ill. 2d at 10.

To dispose of this issue, we must review Dr. Klepsch's testimony to determine whether he

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relied upon the documents in arriving at his causation opinion. The following colloquy occurred during re-cross examination:

"MR. LOFTUS: Now briefly as to some of the materials that Mr. Slocumb referenced, when I talked to you previously or when you testified you had mentioned that you had looked at the information and perhaps his background, is that fair?

DR. KLEPSCH: Yes.

MR. LOFTUS: You did tell me that you did not specifically rely on those documents in terms of forming your conclusions in the case?

DR. KLEPSCH: Correct.

MR. LOFTUS: And was that a true statement?

DR. KLEPSCH: Yes.

MR. LOFTUS: As it is right now?

DR. KLEPSCH: Yes."

During re-cross examination, the questioning continued as follows:

"MR. LOFTUS: Your testimony is [that] you glanced at the material in a cursory way, is that fair to say?

DR. KLEPSCH: Yes.

MR. LOFTUS: And it still is the case that your opinions given here today, you have not relied on any of those materials that Mr. Slocumb sent you having to do with either assessments of railroad individual job tasks or Mr. Sterna's description of his job and his affidavit.

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DR. KLEPSCH: No."

During redirect examination, the following colloquy occurred:

"MR. SLOCOMB: Did these materials, though, further support your opinion you've given?"

DR. KLEPSCH: I think so."

Based on the above colloquy, it is evident that Dr. Klepsch did not rely on the documents provided to him regarding Sterna's job functions. In fact, Dr. Klepsch expressly agreed that he did not specifically rely on those documents in forming his conclusions. However, he believed that the materials further supported the opinion that he rendered. Because Dr. Klepsch did not rely on the documents provided, Sterna's reliance on *People v. Anderson*, 113 Ill. 2d 1 (1986) is misplaced. In that case, a psychiatric expert relied upon reports prepared by psychiatrists, doctors, counselors while the defendant was in the army and while incarcerated in California, reports by the State's psychiatric experts, and information relating to a previous criminal offense. *Id.* at 7. Those reports are reasonably and customarily relied upon by the psychiatric profession. *Id.* Unlike in *Anderson*, there is no evidence supporting a conclusion that Dr. Klepsch relied upon the reports or that the reports were reasonably and customarily relied upon by experts in the field. Thus, the case *sub judice* is distinguishable from *Anderson*. Although the facts in *Anderson* are distinguishable, that case is instructive because it affirms the rule that an expert may refer to the contents of material that he relied upon to arrive at his conclusion. Of significance, however, is the notion that the expert must rely on the information. See also *Lang*, 113 Ill. 2d at 466-67 (Doctors were allowed to testify that they relied upon reports in making

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their diagnosis, and the reports were the type "reasonably and customarily" relied upon by experts). Not only is it clear that Dr. Klepsch did not rely on the reports, but the record is devoid of evidence supporting a finding that experts "reasonably and customarily" rely on the pertinent documents. Although Dr. Klepsch stated that he did not rely on the documents, he did indicate that the documents support his opinion. Thus, the jury could reasonably afford credibility to Dr. Klepsch's opinion because it was based on the information presented in the documents. Accordingly, the trial court did not abuse its discretion in excluding Dr. Klepsch's testimony regarding his review of the documents.

Lastly, Sterna claims that the circuit court abused its discretion by limiting his future-wage loss claim to the winter months and precluding him from presenting a claim for damages relating to future disability. Sterna contends that he presented evidence through Dr. Klepsch's testimony that his knee condition is permanent, progressive and that a future knee replacement is possible. Sterna also relies on Dr. Wapiennik's testimony, who diagnosed him with symptomatic, painful arthritis in his left ankle and an equivocal talar osteochondral dome lesion of the left ankle. Through his own testimony, Sterna claims that he established that he suffers from pain everyday and takes medicine to alleviate that pain. Because his condition was permanent and he routinely took pain medicine, Sterna claims that the circuit court abused its discretion in not instructing the jury regarding future disability.

Sterna's claims regarding the limitation of future-wage loss strictly to the winter months and precluding him from presenting a claim for future disability clearly relate to the element of damages. Generally, this court does not review trial errors relating solely to damages if it is

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evident that "the jury, having found in favor of the defendant as to liability, never reached the question of damages." *McDonnell v. McPartlin III, M.D.*, 192 Ill. 2d 505, 531 (2000). In the case *sub judice*, the jury found in favor of CSX regarding liability, and because it did so, the issue of damages was not considered by the jury. This is known from the instructions that the judge tendered to the jury. The judge instructed the jury that if it decided for Sterna on the question of liability, then it must fix the amount of money that will reasonably and fairly compensate him as damages resulting from CSX's negligence. The judge further instructed the jury that if they find in favor of CSX on the question of liability, then verdict form C must be used, and the jury would have no occasion to consider the questions of damage or the question of Sterna's contribution toward those damages. Because the jury did not consider the issue of damages, this court need not address Sterna's claims of error regarding damages.

CONCLUSION

For the reasons stated, we affirm the judgment of the circuit court.

Affirmed.