

No. 1-12-0247

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STEVEN PRANGLE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	08 L 5032
DANIEL TORRES and ALLIED WASTE)	
TRANSPORTATION, INC., d/b/a Allied)	
Waste of Chicago,)	The Honorable
)	Elizabeth M. Budzinski,
Defendants-Appellees.)	Judge Presiding.
)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

HELD: The trial court did not abuse its discretion in denying plaintiff's posttrial motion for a new trial based on alleged outside influence on the jury where the only outside

influence alleged by a juror in his affidavit was that the jurors reached their verdict on a Friday evening because of "prior engagement that jurors had that evening and the upcoming Monday." The jurors' prior social engagements do not constitute prejudicial information that was directly related to plaintiff's case. Second, the trial court did not abuse its discretion in allowing a defense expert to give his expert opinion that the truck was stationary because it was based on the fact that only one side of the garbage truck bumper had damage on it, which was a fact established by the evidence. Even if the expert's opinion was based on assumed facts, it would still have been properly admissible but subject to cross-examination. Third, because plaintiff did not raise any objection to another defense expert's testimony as cumulative at trial, plaintiff forfeited that argument on appeal. Fourth, the jury's verdict was not against the manifest weight of the evidence.

¶ 1

BACKGROUND

¶ 2 Plaintiff, Steve Prangle, brought the instant action for personal injuries he received in a car accident on October 19, 2007, between the van he was driving and a garbage truck driven by defendant Daniel Torres for his employer, defendant Allied Waste of Chicago (Allied). On October 19, 2007, plaintiff was on his way to visit a friend on the west side of Chicago. After leaving his apartment, plaintiff drove northbound on Clark Street. When he came to the intersection of Clark Street and Polk Street, plaintiff turned left and headed west on Polk Street. Plaintiff was headed to the Eisenhower Expressway and wanted to get on the expressway via Wells Street. After traveling a short distance on Polk Street, plaintiff saw in his peripheral vision a large truck coming toward him out of an alley. Plaintiff claimed the truck struck his van mid-vehicle and nearly caused him to lose control. Plaintiff was a paraplegic from a gunshot wound he received as a teenager and drove a special van equipped with hand controls. As a result of the accident with defendant Torres, Plaintiff sustained neck and spine injuries which were treated at the Rehabilitation Institute of Chicago. Plaintiff filed the instant suit against defendants.

¶ 3 At trial, Torres testified that it was plaintiff who hit his garbage truck while it was sitting

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stationary in the alley where Torres had parked it prior to unloading several garbage dumpsters in the alley north of Polk Street. According to Torres, the front bumper of his truck was even with the curb of the sidewalk and was not out on Polk Street. Torres testified he had returned to the cab of the truck and was preparing to move when plaintiff collided into the truck. Torres testified that he saw plaintiff drive around another car stopped in the westbound lane of Polk Street just before he struck the front of the garbage truck.

¶ 4 Photographs of the front bumper of the garbage truck show damage only to the right side of the bumper. Defendants' accident reconstruction expert, Fred Monick, opined that this damage pattern indicated that plaintiff's van was moving at an angle when there was contact with the bumper. The two vehicles could not have collided perpendicular to each other at the time of impact because there would have been damage all across the garbage truck bumper, instead of only on the right side. Monick's computer simulations predicted that if plaintiff's van was traveling at an angle, and if the front edge of the garbage truck was even with the curb as Torres testified, then the van would have run up on the sidewalk and perhaps even into the adjacent building. There was no evidence that plaintiff's van went onto the sidewalk.

¶ 5 The jury was told during *voir dire* that the trial would conclude by Friday, August 26, 2011. Prior to trial, plaintiff moved *in limine* to bar defendants' expert Fred Monick from testifying, arguing that Monick's opinion lacked foundation and was speculative. Monick's opinion, based on his accident reconstruction model, was that plaintiff turned at a ten-degree angle and hit the garbage truck, which was stationary, and that the accident did not occur with a perpendicular crash caused by Torres driving the truck. Monick based his opinion on the fact

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that there was damage to only one side of the truck's bumper. The trial court denied the motion.

¶ 6 Plaintiff also moved *in limine* to bar Torres' former supervisor at Allied, William Baker, from testifying as an expert witness. Baker's opinion, like Monick's, was that plaintiff was at fault for the accident because the damage was not indicative of a "T-bone" style accident based on his experience and his training, which included National Safety Council training in accident investigation. This opinion was disclosed at his deposition. At the time of trial, Baker no longer worked at Allied. There was some discussion during hearing on the motion *in limine* regarding whether Baker could be called as an adverse witness. Baker was examined before the court and testified that he received accident investigation training with Pace Transit and with the National Safety Council for over ten years. Baker had investigated over 50 accidents.

¶ 7 The jury was instructed and retired to deliberate that Friday shortly after 1:00 p.m. The jury sent two questions indicated it was still undecided on the issue of defendants' liability. At about 4:30 p.m., the foreman sent a note stating the jury was deadlocked. The trial court advised the jurors they should continue to deliberate and gave them the choice of either ending deliberations for the day and returning the following Monday or staying until a verdict was reached that evening. That Friday evening, the jury returned a verdict in the defendants' favor and against plaintiff.

¶ 8 Juror Charles Windemuth executed an affidavit on October 12, 2011, averring, in pertinent part, the following:

"3. At the beginning of trial Judge Elizabeth M. Budzinski indicated that the case was expected to last five days and to end Friday the 26th of August.

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4. During deliberations, other jurors and I were deadlocked and asked the judge for further instructions.

5. In response, Judge Budzinski indicated that the consequence of not reaching a verdict on Friday was that we would have to come back and continue deliberations on Monday.

6. At said time, the jurors and I decided to render a verdict for defendants since further deliberation would have interfered with prior engagements that jurors had that evening and the upcoming Monday.

7. I would have continued to examine the evidence if it had been indicated at the beginning of trial that there was no expected end date for the trial and that further deliberations on Friday would have continued through the evening."

¶ 9 Plaintiff filed a posttrial motion for a new trial, arguing: (1) defense counsel made prejudicial statements during closing argument; (2) the trial court erred in allowing Monick to testify as an expert witness because his opinion was not based on any objective facts or physical evidence; (3) based on Windemuth's affidavit, the jury was exposed to extraneous prejudicial information; (4) the trial court erred in allowing the cumulative testimony of Baker; and (5) the jury's verdict was against the manifest weight of the evidence. Plaintiff's posttrial motion was denied. Plaintiff appealed.

¶ 10

ANALYSIS

¶ 11 Defendants first argue that plaintiff's statement of facts lacks sufficient proper citations to the record and contains numerous statements that are unsupported by the record and facts outside

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the record, including: the discussion of the court's interaction with the jury; the trial court's comment about the propriety of declaring a mistrial; the trial court allowing the jurors to call family members, friends, and child care givers; the fact that the majority of jurors did not want to come back on Monday to continue deliberations; Windemuth's interaction with plaintiff's counsel after the trial; the fact that Windemuth was "upset at how the deliberations ended"; the fact that "there were a number of jurors who believed defendants were liable"; the weather on the date of the verdict; and the assertion that jurors' friends and family members may have influenced the verdict.

¶ 12 We agree that the recitation of the above assertions as fact is improper, as these statements lack support in the record and have no citation to the record. The last statement above is argument and not fact, and also lacks any support in the record. Illinois Supreme Court Rule 341(h)(6) requires that the appellant's statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal ***." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). The above statements are not facts that are "stated accurately and fairly without argument or comment" and they do not contain "appropriate reference to the pages of the record on appeal." See Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). Therefore, we strike these facts from plaintiff's statement of facts and will consider only those facts which have both support in the record and proper citations to the record. See *In re Marriage of Drysch*, 314 Ill. App. 3d 640, 643 (2000) (granting a party's motion to strike portions of the opposing party's statement of facts that contained statements not supported by the record and constituted argument). See also *Estate*

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of *Williams*, 109 Ill. App. 3d 828, (1982) (granting motion to strike facts stated in a reply brief that were *dehors* the record). Also, we adhere to the rule espoused in *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), that "[a]ny doubts arising from the inadequacy of the record will be resolved against the defendant." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 155 (2005) (quoting *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 285 (1987), citing *Foutch*, 99 Ill. 2d at 391-92).

We now address the merits of the appeal.

¶ 13 I. Improper Outside Prejudicial Influence on Jury

¶ 14 Plaintiff first argues that he is entitled to a new trial because the jury was improperly influenced by the fact that jurors had social plans on the Friday evening they were deliberating and thus felt pressured to reach a verdict that same day instead of returning for further deliberations the following Monday. In support, plaintiff relies on an affidavit of juror Windemuth.

¶ 15 Plaintiff also argues that the nice weather also influenced the jury to reach a verdict. Plaintiff contends that August 26, 2011 was a beautiful late summer day, citing to a web site, and implies this also influenced the jury to reach a verdict. Plaintiff argues "[h]ere, it is obvious that friends and family members who had social engagements with members of the jury had influence on the outcome of this case." However, we have determined that the weather is unsupported by the record and therefore we do not consider this ground of alleged improper jury influence asserted by plaintiff. We address only the facts asserted in Windemuth's affidavit as an alleged basis of improper juror influence.

¶ 16 A trial court's ruling on a motion for new trial will not be reversed on appeal absent an

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abuse of discretion. *People v. Willmer*, 396 Ill. App. 3d 175, 181 (2009) (citing *People v. Abdullah*, 336 Ill. App. 3d 940, 949 (2002)). Illinois law is very restrictive as to the manner in which a jury verdict may be impeached. *Willmer*, 396 Ill. App.3d at 181 (citing *People v. Hopley*, 182 Ill. 2d 404, 457–58 (1998), *People v. Holmes*, 69 Ill. 2d 507, 511–16, (1978)). In *Redmond v. Socha*, 216 Ill. 2d 622 (2005), the Illinois Supreme Court reiterated the well-established bar against impeachment of a jury's verdict:

"It is well established in this State, and almost universally recognized, that a jury may not impeach its verdict by affidavit or testimony which shows the motive, method, or process by which the verdict was reached. [Citations.] Thus, it is impermissible to challenge a verdict following the jury's discharge by explaining the basis for the jury's findings [citation] or by asserting that the jury was mistaken." *Redmond*, 216 Ill. 2d at 635 (quoting *Chalmers v. City of Chicago*, 88 Ill. 2d 532, 537 (1982)).

¶ 17 "The rule against admitting juror testimony to impeach a verdict does not, however, preclude juror testimony or affidavits which are offered as proof of improper extraneous influences on the jury." *People v. Hopley*, 182 Ill. 2d 404, 457-58 (1998) (citing *Holmes*, 69 Ill. 2d at 512-14, *Tanner v. United States*, 483 U.S. 107, 120(1987)). This is a limited exception that requires a showing of prejudice. "A jury verdict will be set aside as a result of outside influences or communications only if the defendant was prejudiced as a result of the improper communication or outside influence. *Hopley*, 182 Ill. 2d at 458 (citing *People v. Tobe*, 49 Ill. 2d 538, 542 (1971), *People v. Mills*, 40 Ill. 2d 4, 14 (1968)). Even where a jury has been exposed to improper extraneous information, "reversal of the jury's verdict is not automatic." *Willmer*, 396

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Ill. App. 3d at 181 (citing *Holmes*, 69 Ill. 2d at 518, *People v. Collins*, 351 Ill. App. 3d 175, 179 (2004)). (Emphasis added.) *Willmer*, 396 Ill. App. 3d at 181 (citing *Collins*, 351 Ill. App. 3d at 179). If the party challenging the verdict makes this showing, the burden then shifts to the nonmoving party to establish that the incident is harmless. *Willmer*, 396 Ill. App. 3d at 181 (*Collins*, 351 Ill. App. 3d at 179).

¶ 18 The Illinois Supreme Court adopted the rule as stated in Rule 606(b) of the Federal Rules of Evidence that "a juror should be permitted to testify 'whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.'" *Holmes*, 69 Ill. 2d at 516 (quoting Fed. R. Evid. 606). Federal Rule of Evidence 606(b) provides, in pertinent part, as follows:

"Rule 606. Juror's Competency as a Witness

* * *

(b) During an Inquiry into the Validity of a Verdict or Indictment.

(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) Exceptions. A juror may testify about whether:

(A) extraneous *prejudicial* information was improperly brought to the

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jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(C) a mistake was made in entering the verdict on the verdict form."

(Emphasis added.) Fed. R. Evid. 606(b) (eff. Dec. 1, 2011).

¶ 19 However, the social plans of jurors are not "prejudicial information." Plaintiff has failed to show that the outside influences alleged are "prejudicial information" (*Holmes*, 69 Ill. 2d at 516) "relate[d] directly to something at issue in the case" (*Willmer*, 396 Ill. App. 3d at 181). The only outside influence alleged by Windemuth is that the jurors reached their verdict on a Friday evening because of "prior engagement that jurors had that evening and the upcoming Monday." There is no connection between jurors' alleged social engagements and any issues in the case. The fact that the jurors may have wanted to reach a verdict swiftly because of social plans has nothing to do with any issue in plaintiff's case.

¶ 20 Rather, the allegation raised by plaintiff goes to the jurors' decision-making process, which is not subject to attack. The fact that some jurors wanted to reach a verdict quickly is not a fact that can be used to impeach the jury's verdict. It has no correlation to any actual issue in plaintiff's case. Such jury room deliberations and decision-making is not open to attack by the losing party. "A party may not admit a juror's testimony or affidavit to show, the motive, method, or process by which the jury reached its verdict." *Willmer*, 396 Ill. App.3d at 181 (citing *Hobley*, 182 Ill. 2d at 457).

¶ 21 Plaintiff relies on *People v. Hobley*, 182 Ill. 2d 404 (1998), where the Illinois Supreme Court reversed the defendant's conviction for murder because the jurors were told comments by

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patrons at a restaurant where they dined that "you know he's guilty" and "give him the death penalty." *Hobley*, 182 Ill. 2d at 459. The comments upset some of the jurors, and at the conclusion of the jury's deliberations, the jury found the defendant guilty. The Illinois Supreme Court reversed the defendant's conviction and remanded the case for an evidentiary hearing to determine whether the comments unfairly influenced the jury's verdict. *Id.*

¶ 22 The facts in *Hobley* are clearly distinguishable from the instant case. In *Hobley*, the jurors were confronted with prejudicial comments from people outside the case that directly related to the defendant on trial. Here, the outside influences plaintiff points to as improperly influencing the jury are the jurors' social plans. The jurors' social engagements are not such "outside influences" that can be used to set aside a verdict. The trial court did not abuse its discretion in denying plaintiff's motion for a new trial on this basis and therefore we affirm.

¶ 23 II. Admission of Expert Opinion of Monick

¶ 24 Next, plaintiff argues that the trial court erred in allowing defendants' accident reconstruction expert's opinion when the assumption on which it was based lacked foundation. Monick based his opinion that the garbage truck was stationary and that plaintiff turned and crashed into the garbage truck at a ten-degree angle. Plaintiff argues that Monick's ultimate opinion that plaintiff crashed into defendant Torres' garbage truck lacked foundation and was based on speculation because Monick assumed the garbage truck was stationary, and that there was no evidence to support this assumption.

¶ 25 "The decision of whether to admit or exclude evidence, including whether to allow an expert to present certain opinions, rests solely within the discretion of the trial court and will not

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be disturbed absent an abuse of discretion." *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 36-37 (2010) (citing *Spaetzel v. Dillon*, 393 Ill. App. 3d 806, 812 (2009)). "An abuse of discretion occurs only if 'no reasonable person would take the view adopted by the trial court.'" *Cetera*, 404 Ill. App. 3d at 37 (quoting *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003)).

¶ 26 "Regardless of how skilled or experienced an expert may be, the expert may not state a judgment or opinion based on conjecture." *People v. Ceja*, 204 Ill. 2d 332, 355 (2003).

"However, 'an expert opinion couched in terms of probabilities or possibilities based upon certain assumed facts is not improper or inadmissible.'" *Ceja*, 204 Ill. 2d at 355 (citing *Rodrian v. Seiber*, 194 Ill. App. 3d 504, 507 (1990)). "An expert's opinion as to the cause of an occurrence is not improper or inadmissible merely because it is couched in terms of probabilities or possibilities that are based upon certain assumed facts." *Burlington Northern & Santa Fe Railway Co. v. ABC-NACO*, 389 Ill. App. 3d 691, 706 (2009) (citing *Damron v. Micor Distributing, Ltd.*, 276 Ill. App. 3d 901, 911 (1995)). "Under settled evidence law, an expert may express an opinion that is based on facts that the expert assumes, but does not know, to be true.'" *People v. Negron*, 2012 IL App (1st) 101194 at ¶ 51 (quoting *Williams v. Illinois*, 567 U.S. ___, 132 S. Ct. 2221, 183 L. Ed. 2d 89 (2012)). "On cross-examination, counsel may probe the witness's qualifications, experience and sincerity, weaknesses in his basis, the sufficiency of his assumptions, and the soundness of his opinion." *People v. Pasch*, 152 Ill. 2d 133, 179 (1992) (quoting M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 705.2, at 553 (5th ed. 1990).) Thus, an expert's assumptions underlying his opinion constitute an area that is rightly explored and challenged on cross-examination and not a basis to bar expert testimony.

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¶ 27 Here, it was entirely appropriate for Monick to give his expert opinion regarding how the accident occurred based on his assumption that the garbage truck was stationary. Moreover, the basis for Monick's opinion that the truck was stationary was supported by evidence that there was damage to only one side of the truck's bumper. Contrary to plaintiff's assertion, Monick's opinion does not "include[] so many varying or uncertain factors that he [was] required to guess or surmise to reach an opinion." *Modelski v. Navistar International Transportation Corp.*, 302 Ill. App. 3d 879, 885 (1999). Monick based his assumption that the truck was stationary on the fact that only one side of the garbage truck bumper had damage on it. Monick's computer simulation showed that plaintiff hitting the truck at a ten-degree angle in order to get the damage to occur on only one side of the garbage truck's bumper.

¶ 28 Even if Monick's opinion was based on assumed facts, it would still have been admissible. See *Burlington Northern & Santa Fe Railway Co.*, 389 Ill. App. 3d at 706 (affirming admission of testimony of two experts giving their opinion of the "dragging transom" theory of the cause of a train derailment that was based on certain assumed facts). "Although an expert cannot base opinions on mere conjecture or guess *** an expert may testify as to possible causes of an injury based on facts assumed to be true (citations omitted)." *Scassifero v. Glaser*, 333 Ill. App. 3d 846, 852 (2002).

¶ 29 Here however, Monick based his assumption that the truck was stationary on a fact actually in evidence – the fact that only one side of the garbage truck bumper had damage on it. Again, contrary to plaintiff's assertion, Monick did not "pull" this assumption "out of thin air." Rather, the location of damage on only one side of the bumper was the basis for the computer

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simulation conclusion that plaintiff hit the truck at an angle. Thus, Monick had a factual basis for his opinion. Once this evidence was presented, it was plaintiff's burden to point out the weaknesses in Monick's testimony, and it was for the jury to decide what weight to give the testimony. See *Scassifero*, 333 Ill. App. 3d at 853-54 (holding that once an expert's opinion based on assumptions supported by evidence in the record was presented, it was the defendant's burden to point out weaknesses in the expert's testimony, and it was for the jury to decide what weight, if any, to give to the expert's opinion). There was no abuse of discretion in the court's admission of Monick's expert testimony.

¶ 30 III. Cumulative Expert Testimony of Baker

¶ 31 Third, plaintiff argues that the testimony of defense expert William Baker was cumulative of the testimony of defense expert Fred Monick and should not have been allowed. Plaintiff contends that Baker and Monick "testified on the same subjects, reviewed and based their opinions on identical material, and offered identical opinions." Plaintiff argues that "such duplicative testimony was unfairly prejudicial to the Plaintiff." The exclusion of cumulative evidence is within the discretion of the trial court. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002). Defendants argue that plaintiff waived the issue by not objecting at trial.

¶ 32 We have reviewed the record and we agree. Plaintiff did not raise any objection to Baker's testimony as cumulative at trial. However, failure to timely object at trial in this context is more properly deemed a forfeiture instead of waiver. The Illinois Supreme Court has instructed that failure to renew an objection to a ruling on a motion *in limine* at trial results in forfeiture. *Simmons v. Garces*, 198 Ill. 2d 541, 569 (2002). In *Simmons*, the supreme court held

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that "[t]he denial of a motion *in limine* does not in itself preserve an objection to disputed evidence that is introduced later at trial. 'When a motion *in limine* is denied, a contemporaneous objection to the evidence at the time it is offered is required to preserve the issue for review.'" *Id.* at 569 (quoting *Brown v. Baker*, 284 Ill. App. 3d 401, 406 (1996)). See also *Jones v. Chicago Osteopathic Hospital*, 316 Ill. App. 3d 1121, 1132 (2000) (because the trial court may reconsider at trial its ruling on a motion *in limine*, a party must repeat its objection to the evidence at trial).

¶ 33 We find that plaintiff has forfeited this ground of error by failing to object to Baker's testimony at trial. Although plaintiff did raise an objection based on Baker's testimony being cumulative at the hearing on plaintiff's motion *in limine*, plaintiff was required to renew the objection at trial and failed to do so. Defense counsel elicited Baker's opinion and Baker testified that his "opinion was that the plaintiff's vehicle struck the Allied Waste vehicle," without any objection from plaintiff. We note also that plaintiff makes no reply to the defendants' argument that he waived the issue, thereby tacitly conceding his forfeiture of the issue. Therefore, we find that plaintiff has forfeited any objection to the admission of Baker's testimony due to his failure to timely object at trial. Therefore, we do not consider this issue.

¶ 34 IV. Jury Verdict

¶ 35 Finally, plaintiff argues that the jury's verdict was against the manifest weight of the evidence. A party against whom an adverse verdict has been rendered is entitled to a new trial if the verdict is contrary to the manifest weight of the evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992). On appeal, we weigh the evidence and will set aside the verdict and order a new trial only if the verdict is contrary to the manifest weight of the evidence. *Maple v.*

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Gustafson, 151 Ill. 2d 445, 454 (1992). A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence. *Leonardi v. Loyola University*, 168 Ill. 2d 83, 106 (1995); *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 132 (1999). Once a trial court has applied this test and granted a new trial, we will not reverse a trial court's decision regarding a motion for a new trial unless the trial court abused its discretion. *McClure*, 188 Ill. 2d at 132-33 (citing *Maple*, 151 Ill. 2d at 455).

¶ 36 We review the entire record as a whole, considering all evidence in its aspects most favorable to the appellee. *Eickmeyer v. Blietz Organization, Inc.*, 284 Ill. App. 3d 134, 139 (1996). Additionally, "[i]t is the jury's function to evaluate the evidence and assess the credibility of the witnesses." *Walker v. Midwest Emery Freight Systems, Inc.*, 200 Ill. App. 3d 790, 798 (1990) (citing *Pietka v. Chelco Corp.*, 107 Ill. App. 3d 544 (1982)). We "cannot resolve contradictory testimony or reevaluate the evidence and cannot reverse 'a jury verdict merely because it could have reached a different conclusion [citations], even if there is conflicting evidence on factual questions which is of substantially equal weight.'" *Walker*, 200 Ill. App. 3d at 798 (quoting *Pietka*, 107 Ill. App. 3d at 553).

¶ 37 Here, plaintiff has not shown that the jury's verdict was against the manifest weight of the evidence and that the trial court's denial of his motion for a new trial was an abuse of discretion. Plaintiff argues that the incident could not have happened as claimed by defendant Torres, and that if plaintiff ran into the front of his truck, plaintiff would have run onto the sidewalk or into the building adjacent to the garbage truck. Plaintiff argues that his expert measured a distance of

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63 feet from the edge of the sidewalk to where the dumpsters were located. Defendant Torres testified that he parked his truck so that the rear end of the truck was next to the dumpsters. The truck was slightly less than 31 feet long. According to plaintiff, the front of the truck would have been as much as 20 feet from the street when in that position. Therefore, plaintiff argues, the only logical conclusion is that defendant Torres moved his truck forward and into Polk Street prior to the collision. Plaintiff suggests that since Torres was coming out of an alley, he had a duty to yield to traffic and he was therefore the one at fault for the accident and the jury's verdict was against the manifest weight of the evidence.

¶ 38 However, plaintiff does not point to any evidence at trial which supports his theory that he would have run onto the sidewalk or into the adjacent building. The jury had all the evidence before it regarding the location of the garbage truck and found the defense more credible. The manifest weight of the evidence supports the defense. Torres' supervisor, Baker, took photographs of the truck and testified the truck was not moved after the accident. The pictures depicted the position of the truck at the time of the accident. As plaintiff himself concedes in his brief, "[t]he photographs indisputably show, as testified to by Mr. Baker, that the front end of the garbage truck was even with the edge of the sidewalk and curb." Thus, the evidence at trial established that the truck had not moved out of the alley and into traffic on Polk Street, as plaintiff now urges on appeal. The manifest weight of the evidence supports the jury's verdict. Therefore, we affirm.

¶ 39

CONCLUSION

¶ 40 We determine the trial court did not abuse its discretion in denying plaintiff's posttrial

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motion for a new trial based on alleged outside influence on the jury. The only outside influence alleged by juror Windemuth was that the jurors reached their verdict on a Friday evening because of "prior engagement that jurors had that evening and the upcoming Monday." The jurors' prior social engagements do not constitute prejudicial information that was directly related to plaintiff's case. Second, we determine that the trial court did not abuse its discretion in allowing Monick to give his expert opinion that the truck was stationary because Monick based his assumption that the truck was stationary on the fact that only one side of the garbage truck bumper had damage on it, which was a fact established by the evidence. Even if Monick's opinion was based on assumed facts, it would still have been admissible. Third, we find that because plaintiff did not raise any objection to Baker's testimony as cumulative at trial, plaintiff has forfeited this argument on appeal. Finally, we find that the jury's verdict was not against the manifest weight of the evidence.

¶ 41 Affirmed.