SIXTH DIVISION
October 14, 2016

No. 1-14-3952

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES PARKER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 11 M1 303411
	)	
STEPHAINE GREEN,	)	Honorable
	)	Diane M. Shelley,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Denial of plaintiff's posttrial motion for a new trial affirmed, where: (1) trial court's evidentiary ruling did not deny plaintiff a fair trial; (2) jury's answer to special interrogatory was not inconsistent with its verdict; and (3) jury's verdict was not against the manifest weight of the evidence.

¶ 2 Following a jury trial in this personal injury lawsuit, a judgment was entered against plaintiff-appellant, James Parker, and in favor of defendant-appellee, Stephanie Green. Plaintiff now appeals from the denial of his posttrial motion for a new trial. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 26, 2009, plaintiff and defendant were involved in an automobile collision at the intersection of 111th and State Streets in Chicago.

¶ 5 Plaintiff's insurer filed a subrogation lawsuit against defendant in 2011, in order to recover payments for property damage and medical expenses it had made on behalf of plaintiff with respect to the collision. See *American Family Mutual Insurance Company, a/s/o James H. Parker v. Stephanie Green*, 11 M1 14717 (Cir. Ct. Cook County). Following a jury trial, a verdict and judgment in favor of defendant and against plaintiff's insurer was entered on July 13, 2012.

¶ 6 The present lawsuit was filed on December 20, 2011. In his complaint, plaintiff alleged that the December 26, 2009, collision resulted from defendant's negligence, and that as a direct and proximate result of that negligence plaintiff "was injured and caused to suffer damages of a personal and pecuniary nature." Defendant filed an answer to the complaint denying its material allegations, as well as an affirmative defense asserting plaintiff's contributory negligence.

¶ 7 Defendant also filed a motion to strike with respect to three of the medical bills identified in plaintiff's answers to interrogatories. In that motion, defendant asserted that "[t]he medical bills claimed in this suit are exactly the same as the medical bills adjudicated in the prior action. They arise out of the same car accident on behalf of the same individual. Thus, *res judicata* applies, and plaintiff should be barred from seeking [recovery for] the medical bills again in this action." In an order entered on January 28, 2013, the trial court granted defendant's motion and ruled that the medical bills from those three providers were "stricken and barred from presentation as evidence."

¶ 8 On June 10, 2014, a hearing was held on the parties' motions *in limine* and other pretrial motions. One of plaintiff's motions *in limine* asked the court to vacate the previous order granting defendant's motion to strike. The trial court concluded that there was no basis to reconsider the prior ruling and, therefore, the prior ruling on the motion to strike would stand.

The trial court also rejected a number of plaintiff's arguments with respect to the form of the instructions that would be provided to the jury. Finally, in light of the fact that defendant did not appear at trial, despite being subject to plaintiff's request to do so pursuant to Illinois Supreme Court Rule 237 (Ill. S. Ct. R. 237 (eff. July 1, 2005)), plaintiff asked the trial court to sanction defendant by: (1) striking defendant's affirmative defense; and (2) entering a directed verdict as to liability. The trial court granted plaintiff's request to strike defendant's affirmative defense, but denied plaintiff's request to enter a directed verdict on liability as being "a little extreme."

¶ 9 This case proceeded to a jury trial. The record on appeal does not contain a transcript of the trial; rather, it contains a certified bystander's report. That report reflects that only plaintiff testified at trial, with the trial testimony summarized as follows:

> "He testified that he did not see the Defendant until almost impact because the street Defendant was travelling on was obstructed by a service station. Plaintiff had proceeded into the intersection on a green light and he was struck by Defendant who ignored the traffic signal. He testified that it was a heavy impact and he was pushed into a fence. He said he struck the left side of his head and experienced pain in his head, neck, back and left hand. He did not tell the responding officer that he was injured and did not request an ambulance because he knew that the nearest hospital was located approximately a block away. He walked from the scene to the hospital emergency room. He was examined, released, and walked home. He was told to seek follow up care if he began to feel worse. Two days later when the pain increased he went to Midwest Therapy Center where he received x-rays, and was treated for approximately two months. He received vibration on his back and neck, hot packs, massages and traction. Plaintiff could not recall the name of

the doctor that treated him. He felt better as a result of the treatment. No medical professional or record keeper testified."

¶ 10 At the conclusion of the trial, the jury entered a general verdict for defendant and against plaintiff. The jury also answered a special interrogatory, finding defendant guilty of negligence. The trial court thereafter entered a judgment on that verdict in favor of defendant and against plaintiff.

¶ 11 On July 8, 2014, plaintiff filed a posttrial motion for a new trial, arguing: (1) the jury's verdict was against the manifest weight of the evidence in light of plaintiff's uncontradicted testimony; (2) the jury's general verdict and its answer to the special interrogatory were inconsistent; and (3) plaintiff was denied a fair trial due to the trial court's decision to bar any evidence of plaintiff's medical bills. Defendant filed a written response to the posttrial motion and plaintiff filed a written reply in support thereof, both of which are included in the record on appeal.

¶ 12 While the record on appeal also reflects that a hearing on the posttrial motion was held on November 20, 2014, and a written order denying the motion was entered on December 2, 2014, the record on appeal contains neither a transcript of the hearing nor the written order itself.[1] Plaintiff timely appealed from the denial of his posttrial motion on December 20, 2014.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff contends that his posttrial motion was improperly denied because he was denied a fair trial by the trial court's pretrial rulings, the jury's verdict was inconsistent with

[1] A copy of the December 2, 2014, written order is attached to plaintiff's appellant's brief as an attachment. While plaintiff indicated in his opening brief that he would formally supplement the record with this order, to date he has failed to do so.

its answer to the special interrogatory, and the jury's verdict was against the manifest weight of the evidence. We disagree.

¶ 15 A. Preservation of Issues and Sufficiency of the Record

¶ 16 As an initial matter, we address plaintiff's failure to preserve a number of arguments for appeal and his failure to present this court with a complete record on appeal.

¶ 17 First, plaintiff contends on appeal—in part—that his posttrial motion was improperly denied and he is therefore entitled to a new trial because the trial court made errors with respect to plaintiff's request for Rule 237 sanctions and the instructions it provided to the jury. However, neither issue was raised in plaintiff's posttrial motion for a new trial. Illinois Supreme Court rule 366(b)(iii) (Ill. S. Ct. R. 366(b)(iii) (eff. Feb. 1, 1994)), clearly states that, with respect to appeals following jury trials, "[a] party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion." Because plaintiff never raised these arguments below, they have been forfeited and we will not consider them further. See *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 130314, ¶ 42.

¶ 18 Second, we note again that while plaintiff appeals from the denial of his posttrial motion, the record on appeal does not contain a transcript of the trial proceedings, a transcript of the hearing on the posttrial motion, or the actual written order denying the posttrial motion. It is well recognized that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Pursuant to

this authority and the lack of a complete record on appeal, we should arguably presume that the circuit court's denial of plaintiff's posttrial motion and the proceedings underlying it were proper.

¶ 19 Moreover, defendant's attempt to present the trial court's December 2, 2014, written order to this court as an attachment to his opening brief was improper. See *In re Marriage of Kuyk*, 2015 IL App (2d) 140733, ¶ 21 ("Attachments to briefs that are not otherwise of record are not properly before this court and will not be considered."); *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000) ("Attachments to briefs that are not included in the record are not properly before this court and cannot be used to supplement the record."). It would be virtually impossible for this court to review the trial court's denial of plaintiff's posttrial motion, where the record does not contain the written order detailing the trial court's reasoning for doing so.

¶ 20 Nevertheless, "even if the record on appeal is incomplete, courts have held that appellate review is not precluded where the record contains that which is necessary to dispose of the issues in the case" *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430 (1996). Thus, the failure of an appellant to include a transcript of proceedings is not fatal if the record contains sufficient documents to allow meaningful review of the merits of the appeal. *Marzouki v. Najar–Marzouki*, 2014 IL App (1st) 132841, ¶ 20. Furthermore, defendant has not objected to the state of the record on appeal, and specifically has not objected to the fact that the written order denying the posttrial motion has only been provided to this court as an attachment to plaintiff's brief. This court has the authority to take judicial notice of this order. See *In re Brown*, 71 Ill. 2d 151, 155 (1978) ("Clearly, a court may and should take judicial notice of other proceedings in the same case which is before it and the facts established therein.").

¶ 21 In light of the fact that we have been presented with the parties' filings with respect to the posttrial motion and an undisputed copy of the order denying that motion, we will review plaintiff's remaining arguments on appeal with respect thereto. We reiterate, however, that any doubts which may arise from the incompleteness of the record will be resolved against plaintiff. *Foutch*, 99 Ill. 2d at 391-92.

¶ 22 B. Posttrial Motion

¶ 23 We now turn to a substantive discussion of plaintiff's remaining objections to the denial of his posttrial motion for a new trial.

¶ 24 In considering whether a motion for a new trial should be granted, the trial court should set aside a jury's verdict only if it was contrary to the manifest weight of the evidence or a party has been denied a fair trial. *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992). The trial court is in a superior position to consider errors that occurred, the fairness of the trial to all parties, and whether substantial justice was accomplished. *Smith v. City of Evanston*, 260 Ill. App. 3d 925, 932-33 (1994). A trial court's ruling on a motion for new trial will not be reversed unless there is an affirmative showing that it clearly abused its discretion. *Gustafson*, 151 Ill. 2d at 455.

¶ 25 We first address defendant's contention that he was denied a fair trial due to the trial court's order precluding the introduction of his medical bills into evidence. On appeal, plaintiff contends that this ruling was incorrect and it prejudiced him by depriving him of "the ability to fully and fairly represent his case to the jury." We disagree.

¶ 26 " 'Generally, a party is not entitled to reversal based upon evidentiary rulings unless the error was substantially prejudicial and affected the outcome of the case.' " *Bosco v. Janowitz*, 388 Ill. App. 3d 450, 462-63 (2009) (quoting *Taluzek v. Illinois Central Gulf Railroad Co.*, 255

Ill. App. 3d 72, 83 (1993)). This is because parties are entitled to a fair trial, not a perfect trial. *Id*.

¶ 27 Initially, we are not convinced that the trial court committed *any error* in barring three of plaintiff's medical bills from being presented into evidence, or in rejecting defendant's arguments to the contrary in the context of denying plaintiff's posttrial motion. As this court has explained, "[t]he doctrine of *res judicata* provides that a final judgment on the merits, rendered by a court of competent jurisdiction, bars any later actions between the same parties (or their privies) on the same cause of action. *** Thus, where a plaintiff and a defendant are involved in a car accident, and the plaintiff sues the defendant for property damage to his car, resulting in a final judgment, the plaintiff is barred from later filing a second lawsuit, against the same defendant, arising from the same car collision, seeking damages for *personal* injuries." (Emphasis in original.) *Gadson v. Among Friends Adult Day Care, Inc*., 2015 IL App (1st) 141967, ¶¶ 16-17 (quoting *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996)).

¶ 28 There is a statutory exception to the *res judicata* doctrine in the context of subrogation claims, which provides:

> "A judgment in an action brought and conducted by a subrogee [*i.e*., the insurer] by virtue of the subrogation provision of any contract or by virtue of any subrogation by operation of law, whether in the name of the subrogor [*i.e.*, the insured] or otherwise, is not a bar or a determination on the merits of the case or any aspect thereof in an action by the subrogor to recover upon *any other cause of action* arising out of the same transaction or series of transactions." (Emphasis added.) 735 ILCS 5/2-403(d) (West 2012).

However, "[t]here is no question that section 2-403(d) is designed to protect an insured from having a claim for personal injury barred by *res judicata* because his subrogated insurance

carrier has previously litigated the issue of property damage arising out of the same accident." *Zurich Insurance Co. v. Amcast Industrial Corp*., 318 Ill. App. 3d 330, 335-36 (2000).

¶ 29 Here, it is undisputed that, in the prior subrogation action, plaintiff's insurer sought recovery for *both* the property damage and medical payment claims made by plaintiff and paid under the policy as a result of the collision, which ultimately resulted in a verdict for defendant. Under the above authority, the doctrine of *res judicata* thus applies to bar any attempt plaintiff might make to recover for those medical bills in the current case. The exception contained in section 2-403(d) simply does not apply here as to the medical bills paid by the insurer, because plaintiff's insurer previously sought to recover for *both* medical bills and the property damage.

¶ 30 Even if we concluded that the trial court's evidentiary ruling was in error, we would not find that plaintiff was, therefore, entitled to a new trial. While defendant contends that the trial court barred *all* of his medical bills, the record reflects that there were two bills not adjudicated in the prior subrogation suit that were not barred from introduction into evidence at trial. Moreover, we reject plaintiff's contention that this evidentiary ruling precluded him from presenting any "evidence to establish his injury and its severity." Plaintiff was not precluded from introducing evidence relating to any injuries connected to the three bills stricken by the trial court. Plaintiff was not barred from presenting the other two medical bills or the other medical records identified in his discovery responses, nor was he precluded from presenting testimony from the doctors or the police officer disclosed as potential witnesses. Rather, plaintiff simply elected not to do so. On this record, we conclude that even if this ruling was in error, plaintiff has not shown that the error was substantially prejudicial and affected the outcome of the case. *Bosco*, 388 Ill. App. 3d at 462-63.

¶ 31 Plaintiff next contends that he was entitled to a new trial because the jury's general verdict in favor of defendant was inconsistent with its answer to the special interrogatory, which found that defendant was guilty of negligence. We disagree.

¶ 32 As our supreme court has stated:

> "A special interrogatory serves 'as guardian of the integrity of a general verdict in a civil jury trial.' " [Citation.] It tests the general verdict against the jury's determination as to one or more specific issues of ultimate fact. [Citations.] A special interrogatory is in proper form if (1) it relates to an ultimate issue of fact upon which the rights of the parties depend, and (2) an answer responsive thereto is inconsistent with some general verdict that might be returned. [Citations.] Special findings are inconsistent with a general verdict only where they are 'clearly and absolutely irreconcilable with the general verdict.' [Citation.] If a special interrogatory does not cover all the issues submitted to the jury and a 'reasonable hypothesis' exists that allows the special finding to be construed consistently with the general verdict, they are not 'absolutely irreconcilable' and the special finding will not control. [Citation.] In determining whether answers to special interrogatories are inconsistent with a general verdict, all reasonable presumptions are exercised in favor of the general verdict. [Citation.]" *Simmons v. Garces*, 198 Ill. 2d 541, 555-56 (2002).

We also note that "[t]o recover damages based upon a defendant's alleged negligence, a plaintiff must allege and prove that the defendant owed a duty to the plaintiff, that defendant breached that duty, and that the breach was the proximate cause of the plaintiff's injuries." *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 256 (1999).

¶ 33 In rejecting plaintiff's arguments with respect to this issue, in the context of denying plaintiff's posttrial motion, the trial court followed all of the above guidelines exactly. Specifically, it concluded that while the special interrogatory addressed whether defendant was negligent, the general verdict disposed of the remaining issues of proximate cause and injury. The trial court further noted that while the jury found defendant acted negligently, it also found defendant not liable, perhaps "due to them determining that no injury was suffered or any injury was not proximally caused by the negligence. The court cannot second guess the jury." Because all reasonable presumptions are exercised in favor of the general verdict (*Simmons*, 198 Ill. 2d at 556), and because a trial court's ruling on a motion for new trial will not be reversed unless there is an affirmative showing that it clearly abused its discretion (*Gustafson*, 151 Ill. 2d at 455), we conclude that the trial court did not error in rejecting plaintiff's contention that the general verdict and special interrogatory were inconsistent.

¶ 34 Finally, plaintiff contends that the jury's verdict was against the manifest weight of the evidence in light of plaintiff's uncontradicted testimony that he was injured as a result of the collision. We disagree.

¶ 35 " 'A verdict is contrary to the manifest weight of the evidence when the opposite conclusion is clearly evident or when the jury's findings prove to be unreasonable, arbitrary and not based upon any of the evidence.' " *Bergman v. Kelsey*, 375 Ill. App. 3d 612, 629 (2007) (quoting *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 179 (2006)). Moreover, "credibility determinations and the resolution of inconsistencies and conflicts in testimony are for the jury." *York*, 222 Ill. 2d at 179. It has also been recognized:

> "The long-standing rule is that positive direct testimony may be contradicted and discredited by adverse testimony, circumstantial evidence, discrepancies, omissions, or

> the inherent improbability of the testimony itself. [Citations.] The fact finder is not bound to believe a witness when, based upon all of the other evidence or the inherent improbability or contradictions in the testimony, the fact finder is satisfied of the falsity of the testimony. [Citation.] However, the fact finder may not arbitrarily or capriciously reject unimpeached testimony. [Citation.] Where the testimony of a witness is neither contradicted by direct adverse testimony or by circumstances nor inherently improbable and the witness has not been impeached, the testimony cannot be disregarded by the fact finder." *Baker v. Hutson*, 333 Ill. App. 3d 486, 493 (2002).

¶ 36 In rejecting this very argument below, the trial court noted that "the jury had the discretion to decide whether or not to believe a witness based on the inherent improbability or contradictions in the testimony. *** The issue is whether his testimony was inherently improbable not only as to negligence, but also as to the existence of an injury." After noting that plaintiff testified he declined assistance at the scene of the collision, walked to the hospital where he was treated and released, walked home, and later saw a chiropractor whose name he could not recall, the trial court concluded that the jury could reasonable have rejected plaintiff's testimony regarding his injuries.

¶ 37 Once again, we conclude that the trial court's analysis clearly followed the relevant law. We further note that again that the trial court observed the trial testimony and thus was in a superior position to consider errors that occurred, the fairness of the trial to all parties, and whether substantial justice was accomplished. *Smith*, 260 Ill. App. 3d at 932-33. In contrast, our review of this issue is hampered by the fact that we have not been presented with a transcript of the trial proceedings, but only a bystander's report. Ultimately, we conclude that plaintiff has not demonstrated that the trial court's conclusion that the jury's verdict was not against the manifest

weight of the evidence amounted to a clear abuse of its discretion. Furthermore, any doubts with respect thereto which might arise from the incompleteness of the record must be resolved against plaintiff. *Foutch*, 99 Ill. 2d at 391-92.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 40 Affirmed.