2016 IL App (1st) 152026-U
No. 1-15-2026
December 20, 2016

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

STEVE MOYA, as Special Administrator of the Estate of ALBERT MOYA, deceased, Plaintiff-Appellant, v. THE CITY OF CHICAGO, an Illinois Municipal Corporation, and RICHARD TOBAR, an Individual, Defendants-Appellees.	)	Appeal from the Circuit Court Of Cook County. No. 11 L 1346 The Honorable Donald J. Suriano, Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it barred evidence of the defendant's motive for the allegedly negligent act of driving on a snow-covered side street. The trial court did not abuse its discretion when it gave an issues instruction that simplified and compressed the plaintiff's proposed issues instruction, where the instructions as a whole accurately stated the plaintiff's theories of liability and the applicable law.

¶ 2 A truck driven by Richard Tobar for the City of Chicago ran over Albert Moya while Tobar was driving in reverse. Albert's estate sued the city and Tobar for negligence. The

trial court entered judgment on a jury verdict in favor of the city and Tobar. On appeal, the estate argues that we should reverse the judgment because (1) the city introduced no evidence to support factual assertions it made in its opening statement; (2) the court erroneously excluded evidence that Tobar drove to the area of the accident partly so that he could wave to his grandchildren; (3) the court abused its discretion when it permitted an expert to show a video of the truck backing up on a different day in a different place; (4) the court misstated the issues in jury instructions; and (5) the judge's remarks show that improper considerations affected his rulings.

¶ 3 BACKGROUND

¶ 4 A major storm blanketed Chicago in 20 inches of snow on February 1 and February 2, 2011. From 8 a.m. to 2 p.m. on February 2, 2011, Richard Tobar drove a truck that carried several tons of salt to several bridges, where other city workers spread the salt. Around 2 p.m., Tobar's supervisor told Tobar to take the truck back to the yard where another driver would take over. Tobar needed to refuel the truck. He headed towards a fueling station near 37th and Iron Streets. On the way, he took a short side street, Elias Court, which extends only one block, from Archer Avenue on its northeast end, to Lyman Street on the southeast. Elias lies almost directly north of the fueling station.

¶ 5 Tobar found that he could not push his truck through the snow piled near the southeast end of Elias. He got out of the truck. Persons living on Elias offered to help him dig through the snow so he could drive forward to Lyman. He and the neighbors shoveled for a few minutes before Tobar decided instead to drive the truck backwards to Archer. He backed the

truck nearly the length of the block, backing out onto Archer. After he started to drive forward, he felt a bump. He discovered that his truck had run over and killed a very large man. The 6 foot tall victim, Albert Moya, weighed more than 300 pounds.

¶ 6 Officer Virginia McLinn spoke with Tobar at the scene. She found blood on the truck's passenger side, and she found Albert's wallet and one of his shoes near the crosswalk at the intersection of Elias and Archer. The city tested the truck and found that the truck's horribly loud alarm signal sounded when it backed up. McLinn checked nearby businesses to see if any had video of the accident, but she found none.

¶ 7 An investigator working for Albert's family discovered, three days after the accident, that one nearby business had video that showed Tobar's truck backing onto Archer. The investigator saved the part of the video he thought most useful. The saved clip did not show Albert. It showed the driver's side of the truck as the truck went backwards. The truck stopped near the crosswalk, moved forwards and backwards a few times, and then backed onto Archer.

¶ 8 Steven Moya, as special administrator of Albert's estate, filed a complaint against the city and Tobar, accusing Tobar of negligence. Before trial, the city indicated that it intended to present as a witness Zheng Ming Mei, who ran the business and installed the video system that recorded the video the estate's investigator recovered. According to the city, Mei would testify that the video recording he showed to the investigator started two hours before the accident. He saw on the video a man crossing the street behind the backing truck, but he did not copy that part of the video because the investigator did not request it. The city also

sought an instruction permitting the jury to draw an inference adverse to the estate due to the failure to preserve the video. The court did not permit Mei to testify and refused the proposed instruction.

¶ 9 The estate sought to present evidence that Tobar called his daughter, Rachel Tully, shortly before the accident. Tully and her family lived on Elias. Tully said in her deposition that Tobar liked to drive his truck past her house and wave to his grandchildren. On February 2, 2011, Tobar called Tully to tell her he would see how bad Elias was, and he might soon drive past her house. His truck got stuck on Elias before he passed her house. He spoke to Tully again before he decided to back down Elias to Archer. Tully explained that the route down Elias usually worked as a shortcut to the fueling station, avoiding the bad traffic on Archer.

¶ 10 The city filed a motion *in limine* to bar evidence that Tobar drove down Elias so that he could wave to his grandchildren. The court ruled that the estate could show the route Tobar took, and it could argue that he acted negligently by driving down unplowed Elias. However, the court held that the prejudicial effect of evidence concerning Tully's home and Tobar's choice to wave to his grandchildren outweighed its probative value. He barred the estate from presenting Tully's testimony that Tobar often used Elias as a route to the fueling station because he liked to wave to his grandchildren.

¶ 11 In opening statements, the estate's attorney told the jury that Tobar drove down Archer to Loomis Street, took a left on Loomis, took a left on Lyman, and stopped for two minutes at the intersection of Lyman and Elias. Tobar then proceeded northeast on Lyman to Throop

Street, took a left to head northwest on Throop back to Archer, turned left on Archer and proceeded over ground he had already covered on his first pass down Archer. The second time, he turned left off of Archer onto Elias. The attorney argued that Tobar acted negligently by taking an unplowed one-way residential side street, and that Tobar acted negligently by operating the truck in reverse when he knew he could not see the area immediately behind the truck.

¶ 12 The city's attorney, in opening statements, said:

> "[Tobar] drove a loop around because there was a blizzard and he encountered difficult conditions while he was driving. *** You'll notice *** Archer Avenue, the one he's traveling down, that's a vector. *** [I]f he takes Archer to Loomis, that's going to get him down quicker and – with using less fuel ***.
>
> So he's on Archer, heads to go to Loomis, and you'll hear Loomis was blocked. *** Tries to find another route. So you'll hear that he then takes a left, heads down Lyman. On Lyman he gets to a point there where he does stop around Elias Court. ***
>
> He keeps going on Lyman and he hits Throop, and at Throop he discovers that they plowed a large pile of snow up there, so he can't take his right. *** So he goes north on Throop, and now that he's blocked *** he can't go that way. He decides I'm going to take one of these side streets down, and I'll cut through another way. So he takes Elias Court, and you'll hear evidence that there is no

rule or regulation against him doing that. He went right down the street and then he got stuck."

¶ 13 Officer McLinn testified that a photograph taken from the intersection of Elias and Archer shortly after the accident accurately depicted the appearance of Elias that day. The estate's attorney asked Officer McLinn if Tobar told her why he drove down Elias. The court sustained the city's objection to the question. In an extended sidebar, the court reiterated its pretrial ruling that it would not permit the estate to present evidence that Tobar drove down Elias so that he could wave to his grandchildren. The estate moved for a mistrial. The court said, "I'm denying it. You'll thank me later." The estate's attorney asked why the court said that. The court answered, "[W]hy do you want me to make an error that you probably could get a verdict in this case, and they're going to take it away from you if I rule the way you asked me to, okay?" In later discussion on the same issue, the court emphasized that the estate sought to adduce prejudicial evidence. The estate's attorney asked, "Why is that your concern." The court answered, "It's my concern for you," and added "you want me to let it in, give them something to appeal?," "Keep pushing me. I may give you what you want," and "I'm very tempted to let you mess up your case."

¶ 14 Witnesses agreed that the truck's speed did not exceed 8 miles per hour while backing up. Eyewitnesses from nearby homes did not see Albert before the accident. One witness testified that he saw a number of cars come down Elias and then back out when the drivers discovered they could not get through to Lyman.

¶ 15 The estate's expert, Christopher Ferrone, testified that he saw records showing every road the truck used on February 2, 2011. The truck made a loop, going southwest on Archer, southeast on Loomis, northeast on Lyman, northwest on Throop, then back to Archer, before reaching Elias. Ferrone said that Tobar could have used other routes to reach the fueling station. In Ferrone's opinion, once Tobar got stuck, Tobar should have called his supervisor for instructions, or called for a tow truck. If he needed to back up, he should have called for a spotter to help him. Or he could have shoveled more snow so that he could go forward to Lyman.

¶ 16 During Ferrone's testimony, the court ruled that it would bar both parties from presenting evidence about why Tobar circled around before he turned on Elias. The court said, "Let's pick up when he's on Archer and he makes a left turn on Elias Court."

¶ 17 In accord with the court's ruling, when the city presented Tobar as a witness, the city's attorney did not ask Tobar about what he encountered on Loomis, Lyman and Throop as he looped back to Archer before turning on Elias. Tobar admitted that he did not need to use Elias to get to the fueling station. Tobar admitted that the city had not plowed Elias. Tobar testified that he saw no cars blocking Elias and he thought he could just take it straight back to Lyman. When he turned onto Elias, he could not see the snow piled up near the end of the block.

¶ 18 On cross-examination, Tobar admitted that when he first stopped at Lyman and Elias, before looping back to Archer, he had already reached the end of Elias, and looping back to

Archer and Elias only brought him back to the same spot. He admitted he had no need to drive down Elias at all.

¶ 19 The city presented an accident reconstruction expert, who said that the truck hit Albert on Elias, before the truck backed onto Archer. No rule required Tobar to use a spotter before backing. Over the estate's objection, the expert presented a video of the truck backing up on a clear, dry day, in a location unrelated to the accident scene. The video showed the truck's lights flashing and included the sound of the horrid, incessant beeping of the truck's alarm as the truck went backwards.

¶ 20 In the instructions conference, the estate asked the court to instruct the jury that the estate accused Tobar of acting negligently in that he:

> "Drove onto Elias Court without any utility of purpose when it was not reasonably safe;
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> Reversed his vehicle on a one-way street;
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> Reversed his vehicle when it could not be done safely;
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> Reversed his vehicle a further distance than reasonable;
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> Reversed his vehicle into an area he could not see;
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> Reversed his vehicle without the aid of a spotter;
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> Failed to yield the right-of-way to a pedestrian;
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> Failed to slow or stop to avoid a collision with a pedestrian;
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> Failed to keep a proper lookout;
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> Struck a pedestrian in the crosswalk."

¶ 21 The court refused the instruction. Instead, the court instructed the jurors:

> "The Plaintiff claims that he was injured and sustained damage and that the Defendant Richard Tobar was negligent in one or more of the following respects: Drove onto Elias Court when it was unsafe to do so; reversed his vehicle in an unsafe manner; reversed his vehicle without the aid of a spotter; failed to keep a proper lookout."

¶ 22 The court also instructed the jury on the city's theory that Albert "was contributorily negligent in one or more of the following respects: Failed to keep a proper lookout; failed to appreciate warning signals." The court asked in a special interrogatory, "Do you find that Albert Moya was contributorily negligent?"

¶ 23 The court told the jury that, in assessing negligence, the jurors could consider evidence that Tobar violated a statute which provided that "when traffic control signals are not in place or not in operation, the driver of the vehicle shall stop and yield the right of way to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is travelling or when a pedestrian is approaching so closely from the opposite half of the roadway as to be in danger." Also, the court instructed the jurors about statutes which provide that "the driver of a vehicle shall not back unless such movement can be made with safety and without interfering with other traffic," and that drivers must "exercise due care to avoid colliding with any pedestrian."

¶ 24 In closing argument, the estate's attorney argued that Tobar admitted he did not need to use Elias, which was unplowed, and even if he reached the end of Elias, the route would just

bring him to a point he had already reached before he circled back to Archer. The attorney argued that when Tobar backed up, he dangerously drove the wrong way on a one-way street, and he exacerbated the danger of driving backwards with a large blind spot by backing for about three-quarters of a block without the aid of a spotter.

¶ 25 The jury returned a verdict in favor of Tobar and the city. In response to the special interrogatory, the jury specifically stated it did not find Albert contributorily negligent.

¶ 26 The estate filed a posttrial motion, and in the hearing on the motion, the estate's attorney said to the judge that in comments made off the record, "you said that the Appellate Court had just reversed you and you said the three justices combined had no civil jury experience." The judge admitted he made the comments. The judge clarified that he tried "to avoid reversible error," and the reason he excluded evidence about Tobar waving to his grandchildren was "it's highly prejudicial," and had "no probative value." The court denied the estate's posttrial motion and entered judgment on the verdict.

¶ 27 ANALYSIS

¶ 28 The estate presents five arguments for review: (1) defense counsel misrepresented the evidence in her opening statement; (2) the trial court erroneously excluded evidence of Tobar's motive for driving on Elias; (3) the trial court erroneously allowed into evidence a video showing the truck backing up in conditions unrelated to the accident; (4) jury instructions misstated the issues; and (5) the judge's comments prove that he based his rulings on improper considerations.

¶ 29 Opening Statements

¶ 30 The estate argues that the city's attorney deliberately misrepresented the testimony she expected to adduce. The trial court held that the opening statement did not provide sufficient grounds to support the estate's motion for a new trial. We will not reverse the trial court rulings concerning opening statements unless the trial court abused its discretion. *Davis v. City of Chicago*, 2014 IL App (1st) 122427, ¶ 72. "The general rule as to statements made by counsel in his opening statement to the jury is that such statements are not improper if made in good faith and with reasonable ground to believe that the evidence is admissible, even though the intended proof referred to is afterwards excluded." *Hilgenberg v. Kazan*, 305 Ill. App. 3d 197, 210 (1999).

¶ 31 After the estate's attorney told the jurors about the route Tobar drove, the city's attorney said the evidence would show Tobar drove around a loop "because there was a blizzard and he encountered difficult conditions while he was driving." Tobar tried to take Loomis, but "Loomis was blocked." He turned on Lyman, and near the end of Elias "he [got] stuck in some more snow there because conditions were terrible." He drove on Lyman to Throop, "and at Throop he discovers that they plowed a large pile of snow up there, so he can't take his right. *** He decides I'm going to take one of these side streets down, and I'll cut through another way. So he takes Elias Court."

¶ 32 During Ferrone's testimony, before the city presented any witnesses, the court ruled that the parties could not elicit any testimony concerning the reasons Tobar drove around a loop before heading down Elias. The court said, "Let's pick up when he's on Archer and he makes

a left turn on Elias Court." In accord with the court's ruling, the city elicited no testimony to support its representations that jurors would hear Loomis and Throop were blocked, and conditions were terrible on Lyman near the intersection with Elias.

¶ 33 In his deposition, Tobar testified that to get to the fueling station, he planned to take Archer to Loomis and stay on Loomis to the area of the fueling station. Tobar said that drivers stuck in the snow on Loomis blocked the street. Tobar saw no cars blocking Elias. Tobar testified that he thought, "the snow [is] high, but *** I can plow through." The estate's attorney did not ask why Tobar turned left to go north on Throop, and the attorney did not ask any further questions about why Tobar chose Elias. Thus, Tobar's deposition supports some of the representations the city's attorney made in her opening statement, and no evidence shows that Tobar would not have testified in accord with the opening statement. We find in this record no reason to believe that the city's attorney misrepresented the evidence she expected to adduce. The trial court did not abuse its discretion when it found that the city's attorney committed no misconduct in her opening statement. See *Hilgenberg,* 305 Ill. App. 3d at 210.

¶ 34 Motive Evidence

¶ 35 Next, the estate argues that the trial court erred when it granted the city's motion *in limine* and barred evidence of Tobar's motives for driving on Elias. "A trial judge has discretion in granting a motion *in limine* and a reviewing court will not reverse a trial court's order allowing or excluding evidence unless that discretion was clearly abused." *Swick v. Liautaud,* 169 Ill. 2d 504, 521 (1996). The trial court specifically barred the estate from

eliciting testimony from Tobar and Tully about why Tobar took Elias, and it barred Ferrone from testifying that Tobar negligently drove on Elias "without any utility of purpose."

¶ 36 In its argument, the estate claims that Tully would testify that Tobar drove on Elias so that he could tell her about the condition of Elias. The estate misconstrued Tully's deposition. Tully testified that when Tobar needed to drive to the fueling station, he often used Elias because "It's kind of a shortcut for him and then he gets to wave at the kids." She testified that when he called on February 2, 2011, "He said he might come down [Elias], and he would see how bad [the] street is." Tully also testified that her husband had already shoveled snow, and she knew the city had not plowed Elias. She had no need for Tobar to tell her the condition of Elias, and Tobar knew that. He would look at Elias to see if he thought he could get through, in which case he would pass Tully's house. He did not drive on Elias so that he could describe its condition to his daughter. The court excluded only the expected testimony that Tobar chose to drive on Elias in part so that he could wave to his grandchildren.

¶ 37 The court permitted the estate to introduce evidence of Tobar's route, including the loop around Elias preceeding the turn onto Elias. Tobar admitted that if he had gotten through on Elias, he would have reached a point he had already reached when he drove on Lyman. Tobar and Ferrone both testified that Tobar could have taken other routes so that he would not use Elias.

¶ 38 The court held that the prejudicial effect of testimony that Tobar wanted to wave to his grandchildren outweighed its probative value. We agree with the trial court that the evidence

had little probative value. If Tobar acted negligently by using Elias, the condition of the street, and not the proximity of his daughter, made the act negligent. We also agree that the evidence could have undue prejudicial effect because it might suggest that Tobar had an improper motive for using Elias. See *Bearden v. Hamby*, 240 Ill. App. 3d 779, 783-84 (1992) (motive evidence not relevant for negligence claim).

¶ 39 The estate argues that *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437 (2009), requires reversal. In *Lindsey*, the plaintiff presented an expert who said that "had Lindsey avoided backing up altogether by planning a better route *** the accident would have been prevented." *Lindsey*, 397 Ill. App. 3d at 442. The appellate court said:

> "With regard to [the] claim that [the expert's] testimony improperly referred to preventability, we do not view the *** testimony as improper. The testimony was elicited to advise the jury on the recognizable risk of Lindsey's conduct and the basis for concluding that the harm flowing from the consummation of that risk was reasonably preventable. [Citation]. Nevertheless, even if we were to conclude that the testimony was improperly admitted, the law is clear that the erroneous admission of testimony does not constitute grounds for reversal where there was sufficient competent evidence to support the ruling. [Citation]. In any event, not every error requires reversal. ' "Where it appears that an error did not affect the outcome below, or where the court can see from the entire record that no injury has been done, the judgment or decree will not be disturbed." [Citation.]' *Simmons [v. Garces]*, 198 Ill. 2d [541] at 566-67 [(2002)]. Because

> the evidence of Lindsey's negligence even without [the expert's] testimony was overwhelming and the alleged error does not appear to have prejudiced [the defendants] or affected the outcome below, we find that reversal is not warranted on this basis." *Lindsey*, 397 Ill. App. 3d at 457-58.

¶ 40 *Lindsey* did not involve a dispute concerning Lindsey's motive for choosing the route he chose. At best, *Lindsey* equivocally suggests that the trial court here did not abuse its discretion by permitting the estate to introduce evidence detailing Tobar's route and the availability of alternatives. *Lindsey* does not require reversal. We cannot say that the trial court abused its discretion when it granted the city's motion *in limine* and barred the estate from presenting evidence that Tobar chose to drive on Elias so he could wave to his grandchildren.

¶ 41 The estate argues that even if the court ruled correctly on the motion *in limine*, the court should have permitted testimony about Tobar's motives after the city opened the door to such testimony with its opening statement. Because the estate cited no law in support of the argument, we find the argument waived. See Ill S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016)

¶ 42 Video

¶ 43 The estate contends that the trial court committed reversible error when it permitted the city to show the jury a video recording of the truck backing up, taken from behind the truck on the passenger side on a clear, sunny day, in a location unrelated to the accident site. Before the court allows a party to present a video as evidence, "(1) a foundation must be laid, by someone having personal knowledge of the filmed subject, that the film is an accurate

portrayal of what it purports to show; and (2) the film's probative value cannot be substantially outweighed by the danger of unfair prejudice." *Spyrka v. County of Cook*, 366 Ill. App. 3d 156, 167 (2006). This court will not reverse a ruling on the use of a video recording unless the trial court abused its discretion. *Glassman v. St. Joseph Hospital*, 259 Ill. App. 3d 730, 754 (1994).

¶ 44 The city's expert told the jurors that he made the video recording on a different day in a different location, just to show how the truck's warning system works when it backs up. The expert's testimony provides the necessary foundation for the recording. See *Spyrka*, 366 Ill. App. 3d at 167-69. In light of the expert's explanation, we do not see how the recording could have misled the jurors, and therefore we find no unfair prejudicial effect. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 493-94 (2002). Moreover, the video relates only to the city's affirmative defense that Albert acted negligently. The jury's finding of no contributory negligence assures us that the video had no effect on the verdict, and therefore its use cannot justify reversal. See *Lindsey*, 397 Ill. App. 3d at 458.

¶ 45 Issues Instruction

¶ 46 The estate also challenges the court's jury instruction on the issues in the case. "The trial court has discretion to determine which instructions to give the jury and that determination will not be disturbed absent an abuse of that discretion. [Citations]. The standard for deciding whether a trial court abused its discretion is whether, taken as a whole, the instructions fairly, fully, and comprehensively apprised the jury of the relevant legal principles. [Citation]. A reviewing court ordinarily will not reverse a trial court for giving faulty instructions unless

they clearly misled the jury and resulted in prejudice to the appellant." *Schultz v. Northeast Illinois Regional Commuter R.R. Corp.*, 201 Ill. 2d 260, 273-74 (2002).

¶ 47 The estate asked the court to instruct the jury that the estate claimed Tobar acted negligently in that he:

> "Drove onto Elias Court without any utility of purpose when it was not reasonably safe;
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> Reversed his vehicle on a one-way street;
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> Reversed his vehicle when it could not be done safely;
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> Reversed his vehicle a further distance than reasonable;
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> Reversed his vehicle into an area he could not see;
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> Reversed his vehicle without the aid of a spotter;
>
> Failed to yield the right-of-way to a pedestrian;
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> Failed to slow or stop to avoid a collision with a pedestrian;
>
> Failed to keep a proper lookout;
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> Struck a pedestrian in the crosswalk."

¶ 48 Instead, the court instructed the jury that the estate claimed Tobar acted negligently in that he "Drove onto Elias Court when it was unsafe to do so; reversed his vehicle in an unsafe manner; reversed his vehicle without the aid of a spotter; failed to keep a proper lookout." The court's instruction compressed into a single short clause the estate's claims that Tobar reversed on a one-way street, into an area he could not see, when he could not do so safely, driving in reverse a further distance than reasonable, and he failed to yield, slow or

stop to avoid a pedestrian in the crosswalk. The court summarized all of those claims as a claim that Tobar reversed his vehicle in an unsafe manner. The court also instructed the jurors that in assessing negligence they could consider evidence that Tobar violated statutes which provided that drivers must "yield the right of way to a pedestrian crossing the roadway within a crosswalk", drivers "shall not back unless such movement can be made with safety," and drivers must "exercise due care to avoid colliding with any pedestrian." The estate argued in closing each of its individual claims of negligence. We find that the trial court's simplified instruction fully and fairly informed the jury of the estate's theories concerning the ways in which Tobar acted negligently by driving in reverse. See *Fiorotto v. United States*, 124 F.2d 532, 536 (8th Cir. 1942); *Musick v. Dorel Juvenile Group, Inc.*, 847 F. Supp. 2d 887, 901 (W.D. Va. 2012).

¶ 49 The trial court gave, verbatim, the estate's proposed issues instruction that it claimed Tobar acted negligently when he "reversed his vehicle without the aid of a spotter [and] failed to keep a proper lookout." The estate proposed one other ground for finding Tobar negligent. The estate requested an instruction on its theory that Tobar acted negligently when he "Drove onto Elias Court without any utility of purpose when it was not reasonably safe." The trial court instructed the jury instead that the estate claimed Tobar negligently "Drove onto Elias Court when it was unsafe to do so." Based on the instruction, the estate argued that Tobar acted negligently by driving on Elias when he could see that the city had not plowed the street, and when even if he succeeded in driving through on Elias, he would only reach a point he had already passed on Lyman, before he looped back to Archer. Thus,

the instructions permitted the jury to consider all of the estate's grounds for claiming Tobar acted negligently. We cannot say that the trial court abused its discretion by rewording the unclear issues instruction the estate proposed. See *Solis v. BASF Corp.*, 2012 IL App (1st) 110875, ¶¶ 60-61.

¶ 50 Judge's Remarks

¶ 51 Finally, the estate argues that we must reverse the trial court's judgment because of remarks the judge made when ruling on several motions. Notably, the estate does not contend that any jurors heard the remarks, and the estate does not contend that the judge held any bias against the estate. Instead, the estate claims that the remarks prove that "the court believed Moya would win, defendants would lose, defendants would appeal, and it did not want defendants to have anything to raise on appeal." The estate further claims that the judge's remarks showed that the judge "did not trust [the appellate court's] ability to make logical decisions and was frustrated about being reversed in the past. *** [R]uling for the likely loser would be the only way to guard against being reversed by an irrational reviewing court."

¶ 52 The estate cited in support only *Sekerez v. Rush University Medical Center*, 2011 IL App (1st) 090889, ¶ 74, which involved "questionable" comments the same judge made outside the presence of the jury. The *Sekerez* court concluded that the "plaintiff was not prejudiced by those remarks as the jury did not hear them," and therefore the remarks provided no grounds for reversing the judgment. *Sekerez*, 2011 IL App (1st) 090889, ¶ 74. Here, too, the

jury did not hear the judge's remarks. Thus, the estate has presented no authority for reversing the judgment on the basis of the remarks here.

¶ 53 Moreover, we disagree with the estate's interpretation of the judge's remarks. The judge did not rule in favor of the city on all of the most significant motions. The judge did not permit the city to present Mei's testimony that the estate's investigator saw video that started well before the accident and included a picture of a man, possibly Albert, crossing behind the truck. The investigator chose to preserve only a video segment that did not show the victim. The court also refused the city's proposed instruction designed to allow the jury to draw an inference adverse to the estate from the missing video.

¶ 54 The estate claims, nonetheless, that the judge's remarks show that he ruled in favor of the city on other issues just to avoid reversal. We disagree. We interpret the judge's remarks here as indicating that the judge sought to avoid reversible error. Judges generally should try to follow precedent and avoid reversible error, even if the judge disagrees with the precedent. See *Schramer v. Tigar Athletic Ass'n of Aurora*, 351 Ill. App. 3d 1016, 1020 (2004). Every judge struggles at times to reconcile apparently conflicting precedents, especially when a higher court has told the judge he erred. See, *e.g., Warrren County Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶¶ 45-46. We find no impropriety in the remarks here, and no indication that the judge's desire to avoid reversible error led him to abuse his discretion.

¶ 55 CONCLUSION

¶ 56 The estate has not shown that the city, in its opening statement, deliberately misrepresented the evidence it expected to introduce. The trial court did not abuse its discretion by granting the city's motion *in limine* to exclude evidence of Tobar's motive for driving on Elias. The jury's finding of no contributory negligence shows that the video of the truck backing up had no prejudicial effect. The trial court's jury instructions fully and fairly informed the jury of the estate's theories. The judge's remarks show no impropriety in his rulings and create no basis for reversing the judgment. Accordingly, we affirm the trial court's judgment.

¶ 57 Affirmed.