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2016 IL App (3d) 150869-U

Order filed August 19, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

SEAN METZ,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-15-0869
)	Circuit No. 13-L-868
)	
SHAWN HINTON,)	Honorable
)	Raymond E. Rossi,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion when it ruled to allow an undisclosed witness to testify about details contained in a report previously disclosed to plaintiff during plaintiff's discovery deposition.
- ¶ 2 During a jury trial, plaintiff filed a motion to bar the testimony of a previously undisclosed witness. The trial court denied the motion to bar the witness' testimony. The jury returned a verdict in favor of defendant and against plaintiff. Plaintiff appeals.

FACTS

¶ 3

¶ 4 Sean Metz (plaintiff) initiated a personal injury action against Shawn Hinton (defendant) arising out of a collision between defendant's car and plaintiff's bicycle on June 5, 2013. For purposes of this appeal, it is undisputed that as a result of this collision plaintiff suffered a broken wrist and sustained other minor abrasions requiring treatment at the emergency room. Following his release from treatment, plaintiff arrived at the Joliet police station for the purpose of making an incident or accident report. Plaintiff spoke with Tamara French, who worked in technical services for the Joliet Police Department.

¶ 5 In the complaint, plaintiff alleged defendant's negligence proximately caused damages for plaintiff in excess of \$50,000. Defendant denied the allegations of the complaint and asserted an affirmative defense based on plaintiff's contributory negligence.

¶ 6 The record reveals that the court ordered the parties to complete discovery pursuant to Illinois Supreme Court Rule 213(f). Defendant failed to disclose French as a potential defense witness as required by Rule 213(f). However, during plaintiff's own discovery deposition, conducted on May 2, 2014, plaintiff received and was able to review a copy of the report prepared by French.

¶ 7 Just before the trial began on October 6, 2014, plaintiff presented an oral motion *in limine* seeking to bar the testimony of French. After considering the arguments of both attorneys, the court ruled to allow French's testimony.

¶ 8 Plaintiff testified before the jury and explained that in 2013 he was a semi-professional cyclist. On June 5, 2013, plaintiff rode his bicycle in downtown Joliet as part of a training exercise. While travelling west on Cass Street, both plaintiff's bicycle and defendant's vehicle were moving in a nearly side-by-side fashion in the left lane. According to plaintiff, the other

lanes of traffic to their right were blocked due to construction on the roadway. Plaintiff advised the jury that as plaintiff and defendant approached the intersection at Scott Street together, the traffic light was green. Plaintiff rode his bicycle straight through the intersection, but defendant turned right and collided with plaintiff's bicycle. Just before the collision, plaintiff used his hand to brace himself on defendant's car in an attempt to ride the car through the corner.

¶ 9 As the corner sharpened, plaintiff's bicycle struck defendant's car and plaintiff fell to the ground. Plaintiff testified he first made contact with defendant's vehicle with his hand and the front-end of his bicycle. Plaintiff said defendant's vehicle had almost completed a full turn. Plaintiff suffered a broken wrist and sustained other minor abrasions. Plaintiff was taken to the emergency room and received a cast. Afterward, plaintiff went to the Joliet Police Department to fill out a report pertaining to the accident.

¶ 10 Following plaintiff's testimony, plaintiff's counsel presented a formal written motion to bar the testimony of French. Plaintiff's counsel argued that French and the contents of French's testimony were not previously disclosed pursuant to Rule 213(f). Therefore, plaintiff argued French's testimony would be a surprise and served to unfairly prejudice plaintiff. First, the court decided to exclude the testimony of French, but later elected to allow defense counsel to call French as a witness. However, the court eventually ruled to restrict French's testimony to the facts brought to plaintiff's attention during plaintiff's pretrial discovery deposition.

¶ 11 After the court's ruling, defendant testified before the jury. According to defendant, he was driving to work through downtown Joliet on the day of the accident. While driving westbound on Cass Street, defendant approached the intersection of Scott Street where the light was red. Defendant stopped his vehicle and put on his turn signal. When the light turned green, defendant turned right onto Scott Street. While turning, defendant heard a "kaboom," and

thought he hit a pothole. When defendant looked in the rearview mirror, he saw a cyclist on the ground. Defendant said he completed his right turn by the time plaintiff hit him. Defendant stated that at no point in time did he see plaintiff riding a bicycle beside defendant's vehicle.

¶ 12 The defense next called French, who testified that she worked in technical services at the Joliet Police Department. French testified that her job was to take incident reports from citizens at the police station. On June 5, 2013, plaintiff came into the police department and provided details about the accident. French, in turn, recorded those details in a written report. According to her written report, plaintiff told French on June 5, 2013, that the front passenger side of the car driven by defendant clipped the rear-end of plaintiff's bicycle.

¶ 13 Plaintiff testified as a rebuttal witness. During rebuttal, plaintiff explained to the jury that when he spoke to French at the police department, he said: "I might have been confused from the accident still."

¶ 14 On October 7, 2015, the jury returned a verdict in favor of defendant and against plaintiff. On October 29, 2015, plaintiff filed a motion for a new trial, arguing that he was undeniably prejudiced by the court's ruling permitting defendant to call French. The trial court denied plaintiff's motion for a new trial on December 4, 2015, and plaintiff filed a timely notice of appeal on December 15, 2015.

¶ 15 ANALYSIS

¶ 16 Plaintiff argues the trial court abused its discretion by allowing defendant to call French, an undisclosed witness, to testify in the jury trial. Plaintiff claims the trial court's ruling resulted in surprise and unfair prejudice. In response, defendant contends the trial court did not abuse its discretion by fashioning a ruling that restricted French's testimony to the facts about the accident report addressed during plaintiff's pretrial deposition.

¶ 17 Admission of evidence pursuant to Illinois Supreme Court Rule 213(f) lies within the trial court's discretion and will not be reversed absent an abuse of discretion. Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007); *Copeland v. Stebcro Products Corp.*, 316 Ill. App. 3d 932, 937 (2000). Trial courts abuse their discretion only when their "ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20 (2000). Reversal is only warranted where the trial court's error substantially prejudices the aggrieved party and affects the outcome of the case. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 848 (2010).

¶ 18 Rule 213(f) states that "[u]pon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial." Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007). Further, "the party must identify the subjects on which the witness will testify." Ill. S. Ct. R. 213(f)(1) (eff. Jan. 1, 2007). "Rule 213 is mandatory and strict compliance is required." *Copeland*, 316 Ill. App. 3d at 938; Ill. Sup. Ct. R. 213 (eff. Jan. 1, 2007).

¶ 19 However, Supreme Court Rule 213(g) also states that "the information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition, limits the testimony that can be given by a witness on direct examination at trial." Ill. Sup. Ct. R. 213(g) (eff. Jan. 1, 2007). "Information disclosed in a discovery deposition need not be later specifically identified in a Rule 213(f) answer, but, upon objection at trial, the burden is on the proponent of the witness to prove the information was provided in a Rule 213(f) answer or in the discovery deposition." *Id.*

¶ 20 The record indicates that plaintiff participated in a discovery deposition in this case on May 2, 2014. The parties do not dispute that during plaintiff's deposition, a copy of the report, with French's name on it, was disclosed as a marked exhibit and presented to the plaintiff.

Further, the parties do not dispute plaintiff was asked questions and gave answers concerning the point of impact contained in French's report.

¶ 21 If a party raises an objection based on a non-disclosure under Rule 213(f) at trial, the burden is on the proponent of the undisclosed witness to prove the information to be presented by the witness was previously disclosed to the objecting party as part of a Rule 213(f) answer or a discovery deposition. In this case, French's name was on the disclosed report, and the point of impact described in the report was discussed during plaintiff's discovery deposition.

¶ 22 Based on this record, we reject plaintiff's assertion that the trial court's ruling indisputably prejudiced plaintiff and resulted in the jury's verdict in favor of defendant. Therefore, we conclude the trial court did not abuse its discretion and plaintiff was not deprived of a fair trial in this case.

¶ 23 **CONCLUSION**

¶ 24 The judgment of the circuit court of Will County is affirmed.

¶ 25 Affirmed.