

No. 1-15-2828

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALEXANDRIA KARDASIS,)	Appeal from the
Independent Executor of the Estate of,)	Circuit Court of
MARIA DEMOS, deceased,)	Cook County.
)	
Plaintiff-Appellant,)	
)	
)	
v.)	No. 11 L 13622
)	
JEFFREY LYMAN, M.D., RAJESH)	
JINDAL, M.D., NORTHSHORE)	
UNIVERSITY HEALTH SYSTEM)	
f/k/a GLENBROOK HOSPITAL,)	
)	
Defendants-Appellees.)	Honorable
)	Joan E. Powell
)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion by submitting the issue of contributory negligence to the jury; and (2) the issue of whether the trial court erred in barring plaintiff from the trial was waived.

¶ 2 Plaintiff Alexandria Kardasis brought a wrongful death action on behalf of her mother's estate against defendants, Rajesh Jindal, M.D., Jeffrey Lyman M.D., and Northshore University Health System f/k/a Glenbrook Hospital after her mother died as a result of a pulmonary embolism. The case proceeded to trial, and on March 17, 2015, the jury returned a verdict in favor of the defendants. Subsequently, plaintiff filed a motion for a new trial which was denied on September 9, 2015. On October 5, 2015, plaintiff filed her timely notice of appeal.

¶ 3 **BACKGROUND**

¶ 4 In August 2010, Maria Demos (decedent) underwent an ultrasound of her legs, which revealed a subacute deep vein thrombosis (DVT) in her lower extremity. The decedent spoke primarily Greek, and plaintiff would often accompany her to medical appointments as an interpreter. On August 10, 2010, the decedent's treating and internal medicine physician, Dr. Katherine Lewinski, called plaintiff at home and relayed her assessment of the ultrasound results. Dr. Lewinski testified at trial that she recommended that the decedent be restarted on Coumadin, an anticoagulant drug used as a blood thinner, because there was a risk that the decedent's blood clot could break off and cause a pulmonary embolism. Plaintiff testified that Dr. Lewinski never made such a recommendation and that plaintiff always conveyed Dr. Lewinski's advice to the decedent. Contrary to Dr. Lewinski's testimony, plaintiff testified that Dr. Lewinski informed her that Coumadin was unnecessary because the clots were not life threatening.

¶ 5 During Dr. Lewinski's testimony, plaintiff objected to the testimony regarding the August 2010 conversation between her and Dr. Lewinski. Plaintiff argued that the testimony was hearsay

and that it also violated section 8-201 of the Code of Civil Procedure (735 ILCS 5/8-201)(West 2014)) (Dead Man's Act). Initially, the trial court sustained plaintiff's objection, however the trial court reversed itself the following day.

¶ 6 Prior to Dr. Lewinski's testimony, the defense called Dr. Victor Tapson, a pulmonary physician, as an expert witness. Dr. Tapson reviewed the decedent's medical records and testified that he was aware that Dr. Lewinski recommended Coumadin in August 2010 and that such a recommendation was reasonable in light of the decedent's ultrasound results. Dr. Tapson also testified, based on his review of the medical records, that the decedent elected not to begin taking Coumadin as recommended by Dr. Lewinski. Dr. Tapson opined that defendants were not negligent as they did not deviate from the standard of care.

¶ 7 During Dr. Tapson's testimony, plaintiff became upset, and the trial judge granted plaintiff's counsel's request to take a break. During the break, the trial judge spoke with plaintiff about her behavior during the trial. The trial judge warned plaintiff that if she continued aggressively glaring at witnesses and making disruptive comments, she would be barred from attending the remainder of the trial. Plaintiff was not assuaged and continued to argue with the trial judge; as a result, the trial judge told plaintiff she could no longer be present for the remainder of the trial. Plaintiffs' counsel responded by expressing his concerns about the impact of plaintiff's sudden absence on the jury's perception, and he requested that plaintiff not be barred until after Dr. Tapson finished testifying. The trial judge allowed plaintiff to stay in the courtroom through the end of the day but stated that another family member would need to replace her for the remainder of the trial.

¶ 8 After the parties finished presenting their cases, each party submitted jury instructions to the trial court. The defendants' submissions included an instruction on the issue of contributory

negligence. Plaintiff's counsel objected to the inclusion of a contributory negligence instruction; however the trial court overruled the objection. Subsequently, the jury deliberated and returned a verdict in favor of the defendants, finding that the decedent's negligence contributed to her death.

¶ 9 Following the jury's verdict, plaintiff filed a motion for a new trial. The trial court conducted a hearing on the motion and denied it. This appeal followed.

¶ 10 ANALYSIS

¶ 11 On appeal plaintiff raises the following issues for review: (1) whether the trial court abused its discretion by barring plaintiff from being present for the remainder of the trial; and (2) whether the trial court abused its discretion by giving the jury instruction on contributory negligence. For the reasons that follow, we affirm the decisions of the trial court.

¶ 12 Discussion

¶ 13 At the outset, we begin by addressing plaintiff's contention that the trial court erred when it barred her from being present for the remainder of the trial. The record demonstrates that once the trial court decided plaintiff could no longer be present for the trial, plaintiff's counsel requested that plaintiff be permitted to remain in the courtroom until the parties finished with Dr. Tapson's testimony. Plaintiff's counsel expressed concerns regarding how the jury would perceive plaintiff's sudden absence following the break. As a result, the trial court allowed plaintiff to stay for the remainder of the day, and plaintiff made no objections to the trial court's decision. It was not until later, in her posttrial motion, that plaintiff first raised the issue of being barred from the trial. Consequently, this was insufficient to preserve the issue for appellate review and is therefore waived. See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 201 (2007) (citing *Morgan v. Richardson*, 343 Ill. App. 3d 733, 742, (2003) (failure to

object at trial and to raise the issue in a posttrial motion results in waiver of that issue on appeal)).

¶ 14 Next, we turn to plaintiff's contention that the trial court committed reversible error when it submitted the issue of contributory negligence to the jury. Plaintiff contends that there was no evidence supporting the contributory negligence instruction and that the trial court erroneously based its submission on inadmissible testimony about the telephone conversation between Dr. Lewinski and the plaintiff. Plaintiff contends (1) that Dr. Tapson's testimony was inadmissible because it was improper for him to render an opinion based on a mere allegation that Dr. Lewinski recommended Coumadin; and (2) that Dr. Lewinski's testimony regarding her conversation with plaintiff was inadmissible hearsay and was precluded by the Dead Man's Act. In response, the defendants argue that even if Dr. Lewinski's testimony was improperly admitted, the combination of plaintiff's testimony and Dr. Tapson's properly admitted expert testimony was sufficient to support the contributory negligence instruction. We agree with the defendants.

¶ 15 Questions regarding the admissibility of evidence lie within the discretion of the circuit court, and a reviewing court may overturn a trial court's determination only when the record clearly demonstrates that the court abused its discretion. *People v. Zwart*, 151 Ill. 2d 37, 44 (1992) (citing *People v. Franklin*, 135 Ill. 2d 78, 96 (1990)). Moreover, a reviewing court will only find an abuse of discretion where the trial court's decision is arbitrary, fanciful, or unreasonable, such that no reasonable person would take the view adopted by the trial court. *People v. Schlott*, 2015 IL App (3d) 130725, ¶ 24.

¶ 16 On appeal, plaintiff challenges the admissibility of Dr. Tapson's expert testimony. The testimony of an expert witness is admissible if the proffered expert is qualified by knowledge, skill, experience, training, or education and the testimony will assist the trier of fact in

understanding the evidence. *Davis v. Kraff*, 405 Ill. App. 3d 20, 38 (2010). An expert may base his opinion on evidence, which is otherwise inadmissible hearsay, if such evidence is reasonably relied upon by experts in the field, and such evidence may be admitted as nonhearsay for the limited purpose of explaining the basis of an expert's opinion if the court in its discretion finds it otherwise meets the minimum standards of reliability. *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 676 (1992) (citing *City of Chicago v. Anthony*, 136 Ill.2d 169, 185–86 (1990)). Further, “[i]t is not error to permit an expert to testify regarding reports or medical tests performed by other doctors, which the expert examined in reaching his or her own opinion.” *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 105 (1995).” An expert witness is permitted to state an opinion based on facts not within his or her personal knowledge so long as those facts are of a type reasonably relied upon by experts in the particular field. *Iaccino v. Anderson*, 406 Ill. App. 3d 397, 407 (2010).

¶ 17 Contrary to plaintiff's assertions, our review of the record demonstrates that Dr. Tapson based his opinions on the decedent's medical records. At trial he stated that the decedent elected not to begin taking Coumadin and that he was aware that Dr. Lewinski recommended Coumadin in August 2010. He opined that such a recommendation was reasonable in light of the decedent's ultrasound results. Plaintiff has not cited any authority or facts supporting the conclusion that the trial court's decision to admit Dr. Tapson's testimony was arbitrary, fanciful, or unreasonable. See *Schlott*, 2015 IL App (3d) 130725 at ¶ 24. Thus, the trial court did not abuse its discretion by admitting the testimony.

¶ 18 In light of our foregoing conclusion, we turn to plaintiff's contention that there was no evidence supporting the trial court's decision to give the contributory negligence instruction. The Illinois Supreme Court has held that a defendant is entitled to have the jury instructed on

contributory negligence if there is any evidence to support the theory. *Wilson v. Missouri Pacific Railroad Co.*, 169 Ill. 2d 170, 175 (1996).

¶ 19 According to the record, plaintiff's counsel cross examined defendant's expert, Dr. Mark Cichon, an emergency medicine osteopathic doctor, about his knowledge of Dr. Lewinski's August 2010 note. Dr. Cichon confirmed that the note documented the conversation between Dr. Lewinski and the plaintiff. Dr. Tapson testified, based on the August 2010 note, that Dr. Lewinski recommended that the decedent restart Coumadin. Plaintiff testified that Dr. Lewinski called her at her home in August 2010 to discuss the decedent's ultrasound results. Plaintiff also testified that she acted as an interpreter for her mother because the decedent primarily spoke Greek, and she testified that she always conveyed Dr. Lewinski's advice to the decedent. Plaintiff contradicted Dr. Tapson's testimony by testifying that Dr. Lewinski merely presented the option of restarting Coumadin rather than making a recommendation. We find that the defense presented sufficient evidence to create an issue of fact, for the jury to resolve, concerning the substance of Dr. Lewinski's advice; therefore, we find the record contains sufficient evidence to support a jury instruction on contributory negligence. See *Wilson*, 169 Ill. 2d at 175.

¶ 20 Plaintiff also contends that she was denied a fair trial because she was not permitted to cross examine Dr. Lewinski and impeach her testimony. We note that once the trial court decided to admit Dr. Lewinski's testimony at a side bar, plaintiff did not request that the court recall the witness nor object to proceeding without cross examining Dr. Lewinski. Plaintiff first raised the issue in her posttrial motion, and as we have previously stated, a failure to object at trial and to raise the issue in a posttrial motion results in waiver of that issue on appeal. See *First National Bank*, 375 Ill. App. 3d at 201.

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¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed