

No. 1-17-0347

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

YLONDA PHILLIPS,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County
)
 v.) No. 11 L 4719
)
 NORTHWESTERN MEMORIAL HOSPITAL,)
) Honorable
) Lorna Propes,
 Defendant-Appellee.) Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County in favor of the hospital defendant in a medical negligence action where (i) the trial court did not err in permitting the defendant to utilize testimony from a prior trial without a formal adoption or disclosure under Illinois Supreme Court Rule 213; (ii) the trial court did not err in overruling a Rule 213 objection during the trial; and (iii) the jury verdict was not against the manifest weight of the evidence.

¶ 2 Ylonda Phillips (Phillips) filed a single-count medical negligence action in the circuit court of Cook County against Northwestern Memorial Hospital (Northwestern). Phillips alleged that Richard Rink, M.D. (Dr. Rink), a resident employed by Northwestern, was negligent in the manner in which he removed a post-operative drain from her abdomen. After an initial trial resulted in a hung jury and mistrial, the jury in a second trial returned a general verdict in favor

of Northwestern. Citing Illinois Supreme Court Rule 213 (eff. Jan. 1, 2007), Phillips challenges a pretrial ruling permitting Northwestern to utilize testimony from the first trial as “disclosed” opinion testimony for purposes of the second trial. She also contends that the trial court erred in overruling a Rule 213 objection during the trial. Phillips further asserts that the verdict was against the manifest weight of the evidence. For the reasons discussed below, we affirm.

¶ 3

BACKGROUND

¶ 4 The testimony during the second trial included the following. Phillips testified that she had consulted her family physician after experiencing chest pain. She was subsequently referred to a specialist at Northwestern, Dr. David Bentrem (Dr. Bentrem), who discovered a benign mass on her pancreas. On August 6, 2009, Dr. Bentrem performed a distal pancreatectomy, *i.e.*, the surgical removal of a portion of the pancreas. When she was discharged from Northwestern four days later, a post-operative drain known as a Jackson-Pratt drain (JP drain) was left in Phillips because the pancreas had formed a fistula, or leak.

¶ 5 During a scheduled visit on August 19, 2009, Dr. Bentrem informed Phillips that the JP drain was not ready to be removed because the output was not sufficiently low. When she returned to Dr. Bentrem’s office on August 26, 2009, the output had decreased to an appropriate level, and Dr. Rink performed the drain removal procedure. After cleaning the area around the drain and using scissors to cut a stitch, Dr. Rink placed his left hand on her stomach and used his right hand to pull the drain tube. Phillips testified that she felt a pulling sensation and then severe pain. After reassuring Phillips, Dr. Rink “yanked” on the tube, which caused her more pain. Phillips’ mother – who was present for the procedure – asked Dr. Rink to “do something” for her daughter. According to Phillips, Dr. Rink injected liquid from a syringe around the tube area, waited approximately five minutes, and then removed the tube with another “yank.”

Because Phillips had difficulty walking following the procedure, her aunt asked the nurse, Linda Feldman (Feldman), to bring a wheelchair to transport Phillips to their vehicle.

¶ 6 Although she testified that she had no complications following her hospital discharge after the distal pancreatectomy, Phillips experienced pain and weakness after the drain removal twenty days later. She then went to the emergency room on August 28, 2009, and was hospitalized until September 22, 2009. Phillips testified that her ongoing pain and the effects of the medication limited her participation in activities, *e.g.*, driving, bowling, and volunteer work.

¶ 7 Dr. Rink testified that he was a first-year resident assigned to Dr. Bentrem's service during his surgical oncology rotation. Prior to August 26, 2009, Dr. Rink had removed "close to a hundred" JP drains after various surgical procedures, including 10 to 15 drain removals following distal pancreatectomies. According to Dr. Rink, throughout the procedure Phillips appeared anxious and in pain. He explained to her that the process can be painful and administered a local anesthetic to numb her skin, which made her "much more comfortable." Dr. Rink testified that he never "yanked" or used excessive force when removing her drain tube and that the tube came out "smoothly" and "easily." He further testified that he would have informed a senior resident or Dr. Bentrem if he had encountered any difficulty in removing the drain.

¶ 8 Feldman, a surgical oncology nurse at Northwestern who worked in Dr. Bentrem's office, testified that she could not remember the actual drain removal, but she does recall that Phillips experienced discomfort. Feldman testified that the removal process can be painful and that she typically advised patients to take pain medication before arriving for the procedure. She further testified that she had never witnessed a medical professional "yank" a JP drain during removal. While she would have contacted the attending physician if a resident had encountered difficulty

while removing a drain, Feldman did not recall contacting the attending physician in connection with the removal of the drain from Phillips.

¶ 9 Dr. David Ondrula (Dr. Ondrula), who is board certified in general and colorectal surgery, testified as a retained expert for Phillips. He opined that Dr. Rink deviated from the standard of care when he removed the JP drain from Phillips. According to Dr. Ondrula, Dr. Rink should have stopped the procedure and sought guidance from an attending physician or a more senior resident when the drain was halfway out and Phillips was experiencing discomfort. Dr. Ondrula testified that while resistance is “expected” when the silicone JP drain is starting to be removed – due to pulling of the skin – any subsequent resistance is abnormal and requires the medical professional to perform other studies to determine why the tube is not easily withdrawing from the abdomen. Although he theorized that the drain had become snagged on a surgical staple during removal, he acknowledged that the drain could not have been stapled to the pancreas because the staples were in place prior to the placement of the drain.

¶ 10 Dr. Ondrula opined that a more experienced physician “would have or should have” ordered a radiographic study, such as a CT scan with contrast, to determine the proximity of the drain to intra-abdominal organs and whether the drain was adhering to any organs. If a radiographic study had demonstrated any complication, Dr. Ondrula believes that the drain could have been safely removed through a laparoscopic procedure.

¶ 11 Although his testimony is not included in the record on appeal (as discussed below), Dr. John Segreti (Dr. Segreti) testified as an expert for Phillips. He apparently opined that the bacteria discovered in her abdominal fluid likely resulted from a bowel perforation.

¶ 12 The defense presented the following witnesses. Dr. Bentrem, who is board certified in general surgery, testified that he had performed 250 distal pancreatectomies. He explained that

pancreatic surgery is considered a high risk, with 40% to 50% of patients experiencing complications. According to Dr. Bentrem, the most common post-surgical complication – fistula – is experienced by 30% of patients.

¶ 13 Dr. Bentrem described Phillips’ surgery, in which the tail end of the pancreas and the spleen were removed. He testified that multiple methods are utilized to seal off as much of the transected end of a pancreas as possible, *i.e.*, a cauterizing device, surgical staples, and a fibrin sealing strip. According to Dr. Bentrem, fluid can continue to accumulate despite such measures, even after the removal of a JP drain. When Phillips was hospitalized after the JP drain removal, she was diagnosed with intra-abdominal abscesses and an intra-abdominal infection, which occurs 10% of the time. Dr. Bentrem opined that her complications were unrelated to the manner in which Dr. Rink removed the JP drain.

¶ 14 Dr. Fred Zar (Dr. Zar), who is board certified in internal medicine and infectious diseases, testified as an expert for Northwestern. According to Dr. Zar, the insertion of the JP drain indicated that a fistula had developed from the distal pancreatectomy, which he characterized as “fairly common.” When Phillips was hospitalized following the drain removal, the infected fluid collecting in her abdomen was found to contain enterobacter – a bacteria normally present in the bowel – but no other organisms.

¶ 15 Dr. Zar disagreed with Dr. Segreti’s opinion, *i.e.*, that the enterobacter in the abdominal fluid resulted from a bowel perforation, as “biologically not possible.” Dr. Zar testified that the bowel contains “hundreds and hundreds” of different bacteria, and that any infection from a bowel perforation would typically contain an average of four to five forms of bacteria – not just one bacteria, as found in Phillips. Dr. Zar further testified that no bowel perforation was discovered during Phillips’ hospitalization.

¶ 16 When asked where the enterobacter came from, Dr. Zar explained that when a patient uses stomach acid medication – as Phillips did – the enterobacter which normally live in the colon can move into the duodenum and then the pancreas. The pancreas would normally flush the enterobacter back into the bowel. Because of her pancreatic surgery, however, the enterobacter could no longer be flushed. Dr. Zar also testified that a JP drain can remove bacteria which may flow out of the pancreas, thus “depolluting the area.” The removal of the drain creates the opportunity for bacteria to collect and multiply into a sufficiently high concentration so as to cause an infection. Dr. Zar opined that Phillips’ infection developed from the removal of the JP drain but was unrelated to the particular *method* of removal. He further opined that her infection was a recognized complication of her surgery on August 6, 2009.

¶ 17 Dr. Scott Peckler (Dr. Peckler), who is board certified in general surgery, was a second retained expert witness for Northwestern. He testified that he had never experienced or heard of a JP drain becoming snagged on surgical staples. According to Dr. Peckler, the staples are placed before the drains are inserted “so they are completely closed and positioned.” He further testified the appropriate amount of force when removing a JP drain “is whatever it takes to get the drain out without tearing it.” He noted that a fistula is a “very common thing both after surgery and after removing the drain,” and can lead to other complications, such as infection.

¶ 18 Dr. Peckler opined that the removal of the JP drain was not improper and Dr. Rink was not required to contact an attending or a more senior resident during the procedure. He also opined that the standard of care would not have required a CT scan. Dr. Peckler had never ordered a CT scan during a JP drain removal to determine the location of the drain nor had he heard of such a practice. He further testified that a patient would not be moved to an operating room during the JP drain removal process unless the drain had broken and a fragment remained

inside the patient. Dr. Peckler also opined that there was neither a bowel injury nor a pancreatic injury which resulted from the removal of the JP drain. He testified that it would be rare for a patient to “grow out” only a single organism, *i.e.*, enterobacter, after sustaining a bowel injury.

¶ 19 Dr. Peckler ultimately opined that Dr. Rink complied with the standard of care in the removal of the JP drain from Phillips. Dr. Peckler also characterized her continuing pain at the drain site as “extremely unusual,” noting that any inflammation or trauma “should be long resolved.”

¶ 20 At the close of testimony, the trial court denied Northwestern’s renewed motion for a directed verdict. Following closing arguments and jury instructions, the jury returned a general verdict in favor of Northwestern and against Phillips. Judgment was entered on the verdict, and the trial court denied Phillips’ posttrial motion. Phillips then filed this timely appeal.

¶ 21 ANALYSIS

¶ 22 Phillips contends that the trial court erred in (a) permitting Northwestern to utilize prior trial testimony without a “formal disclosure or adoption” under Illinois Supreme Court Rule 213 and (b) overruling a Rule 213 objection during the trial. She also asserts that the jury verdict was against the manifest weight of the evidence. Each contention is discussed below.

¶ 23 We initially note that the record on appeal does not include certain key documents, including a transcript or other report of proceedings from the first day of the second trial. See Ill. S. Ct. R. 323 (eff. July 1, 2017). As discussed further below, Phillips has failed to meet her burden of presenting an adequate record, and any doubts arising from the incompleteness of the record will be resolved against her. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 24 Illinois Supreme Court Rule 213

¶ 25 The goal of the discovery process in Illinois is full disclosure. *Payne v. Hall*, 2013 IL

App (1st) 113519, ¶ 13. Rule 213 – addressing written interrogatories to parties – “permits litigants to rely on the disclosed opinions of opposing experts and to construct their trial strategy accordingly.” *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109 (2004). Rule 213(f)(3) specifically requires that a party must disclose the subject matter, conclusions, opinions, bases for opinions, qualifications, and reports of any “controlled expert witness,” which is defined to include a party’s retained expert. Ill. S. Ct. R. 213(f)(3) (eff. Jan. 1, 2007). According to Rule 213(g), the “information disclosed in an 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. S. Ct. R. 213(g). “The purpose behind Rule 213 is to avoid surprise and to discourage tactical gamesmanship.” *Sullivan*, 209 Ill. 2d at 111. See also Ill. S. Ct. R. 213, Committee Comments. The disclosure requirements of Rule 213 are mandatory and subject to strict compliance by the parties. *Sullivan*, 209 Ill. 2d at 109.

¶ 26 Phillips contends that “[i]n pretrial motions, over plaintiff’s objection, this court ruled that the defendant was permitted to utilize prior expert testimony as ‘disclosed’ opinion testimony in this trial.” As a preliminary matter, we presume her claim of error relates to a ruling of the *trial* court, and not any ruling by this Court. We further observe that Phillips fails to provide accurate citations to the record for this contention, in violation of Illinois Supreme Court Rule 341. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017) (requiring argument “with citation of the authorities and the pages of the record relied on”). The record on appeal does not appear to include any written pretrial motion specifically addressing the use of expert testimony from the first trial, or any written order thereon. As noted above, the record on appeal also does not include any transcript or other report of proceedings from the first day of the trial, when the trial court presumably ruled on any pending written or oral pretrial motions.

¶ 27 Phillips, as the appellant, has the duty to present this court with a sufficiently complete record of the trial court proceedings to support her claim of error. *Wackrow v. Niemi*, 231 Ill. 2d 418, 428 n. 4 (2008). As provided in Illinois Supreme Court Rule 323(a), the “report of proceedings shall include all the evidence pertinent to the issues on appeal.” Ill. S. Ct. R. 323. Absent an adequate record regarding the trial court’s consideration and disposition of any pretrial motion, we must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. See *Wackrow*, 231 Ill. 2d at 428 n. 4. See also *Compton v. Ubilluz*, 353 Ill. App. 3d 863, 872 (2004) (concluding that “[b]ecause defendant has failed to supply this court with an adequate record of his motion *in limine* or an order issued by the trial court on that motion, we resolve the issue against defendant”).

¶ 28 In any event, the legal support relied upon by Phillips is inapposite. Phillips cites cases wherein the appellate court concluded that the trial court abused its discretion in allowing an expert to testify with new opinions not previously disclosed pursuant to Illinois Supreme Court Rule 213. *Regala v. Rush North Shore Medical Center*, 323 Ill. App. 3d 579, 584-85 (2001) (concluding that the erroneous admission of an expert’s undisclosed opinions mandated reversal); *Copeland v. Stebcro Products Corp.*, 316 Ill. App. 3d 932, 943-44 (2000) (providing that the plaintiff’s failure to disclose her expert’s post-deposition tests and measurements violated Rule 213); *Seef v. Ingalls Memorial Hospital*, 311 Ill. App. 3d 7, 24 (1999) (discussing the cumulative effect of the erroneous admission of an expert’s undisclosed opinions). None of the foregoing cases, however, involved a retrial.

¶ 29 The Illinois Appellate Court in *Nassar v. County of Cook*, 333 Ill. App. 3d 289, 302 (2002), held that “Rule 213 does not require a formal adoption of objected to trial testimony from a mistrial in the same case prior to a retrial.” Distinguishing the cases cited above, the

appellate court in *Nassar* observed that “[t]here was no surprise here because the complained of testimony was presented at the first trial.” *Id.* See also *Tsoukas v. Lapid*, 315 Ill. App. 3d 372, 379 (2000) (where appellate court reversed and remanded for a new trial on other grounds, it observed that “[e]ven assuming, *arguendo*, the testimony of plaintiff’s pathology opinion witnesses exceeded the bounds of proper rebuttal and violated Rule 213, no surprise will arise on retrial and the issue is now moot”); *Firststar Bank of Illinois v. Peirce*, 306 Ill. App. 3d 525, 537 (1999) (appellate court “presume[d] surprise will not be a component” on retrial where the erroneous admission of an expert’s undisclosed opinions had created reversible error). Based on the foregoing, we reject Phillips’ challenge to any pretrial ruling that Northwestern was allowed to utilize prior expert trial testimony as “disclosed” opinion testimony in the retrial.

¶ 30 Phillips also raises a specific challenge to a trial court ruling during the testimony of Dr. Zar in the second trial. Without citation to the record (see Ill. S. Ct. R. 341(h)(7)), Phillips asserts that “in the first trial the ‘disruption of the pancreas’ formed one of the bases for the testimony that Dr. Ondrula gave as to why the JP drain had caused this incident to have occurred.” According to Phillips, such testimony was “especially critical” because the volume of fluid which had accumulated in her abdomen in the two days after the removal of her JP drain was exponentially more than the drainage amount measured before the removal. During the second trial, the following exchange occurred between defense counsel and Dr. Zar:

“Q. The distal pancreatectomy, I believe you explained that the surgery injured the duct of the pancreas; correct?

A. By definition it cuts across the ducts yes.

Q. Would you characterize that cutting across of the ducts as a disruption?

A. Sure. Yes.”

Phillips' counsel objected under Rule 213, arguing that defense counsel had elicited a *new* opinion, *i.e.*, that the use of the term "disruption" only referred to the cutting of the pancreas. In overruling the objection, the trial court noted that Dr. Zar's testimony "sounds like the same thing in different words" as was elicited from him during cross-examination by Phillips' counsel in the first trial. On appeal, Phillips contends that Dr. Zar's "new opinion" was "meant to negate the testimony by Dr. Ondrula concerning the cause of the massive fluid leak."

¶ 31 The admission of evidence pursuant to Rule 213 is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Sullivan*, 209 Ill. 2d at 109. A trial court abuses its discretion when its ruling is arbitrary, unreasonable, fanciful, or where no reasonable person would take the view adopted by the court. *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23. Based on its comments, the trial court considered Dr. Zar's testimony to be sufficiently comparable to his testimony during the first trial. Particularly where the record on appeal does not include any transcript or summary of his testimony from the first trial – or his complete deposition or the relevant Rule 213 disclosures from Northwestern – we have no reason to question the trial court's determination that Dr. Zar's opinion in the second trial was not "new." The trial court did not abuse its discretion in overruling the objection.

¶ 32 Citing the "two-issue rule" which has been adopted by Illinois courts, Northwestern also contends that Phillips cannot demonstrate that the introduction of Dr. Zar's allegedly undisclosed opinion affected the outcome of the trial. "Under the two-issue rule, a general jury verdict will not be disturbed on review if the case involved two or more causes of action or defenses and there was sufficient evidence to support at least one of the issues or defenses presented to the jury free from error." *Robinson v. Boffa*, 402 Ill. App. 3d 401, 406 (2010). Accord *Strino v. Premier Healthcare Associates, P.C.*, 365 Ill. App. 3d 895, 904 (2006). Given the general

verdict in the instant case, Northwestern asserts that the jury is presumed to have found in its favor on the issue of *negligence*, and any error relating to Dr. Zar’s *causation* opinion would be harmless. Because we have otherwise rejected Phillips’ Rule 213 challenge to Dr. Zar’s testimony (as discussed above), however, we need not consider the impact of the two-issue rule.

¶ 33

The Jury Verdict

¶ 34 Phillips also contends that the verdict in favor of Northwestern was against the manifest weight of the evidence. “To reverse a jury verdict as against the manifest weight of the evidence, we must find that: (1) it is unreasonable, arbitrary, and not based on the evidence; or (2) the opposite conclusion is readily apparent.” *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 179 (2008). Accord *Pantaleo v. Our Lady of the Resurrection Medical Center*, 297 Ill. App. 3d 266, 278 (1998). When considering whether a verdict was contrary to the manifest weight of the evidence, we must view the evidence in the light most favorable to the appellee. *Cipolla v. Village of Oak Lawn*, 2015 IL App (1st) 132228, ¶ 60.

¶ 35 As discussed above, Phillips, as the appellant, has the burden to present a sufficiently complete record to support a claim of error, and any doubts arising from incompleteness will be resolved against her. *Foutch*, 99 Ill. 2d at 391-92. In the instant case, the record on appeal does not include a transcript or other report of proceedings from the first day of the trial. See Ill. S. Ct. R. 323 (eff. July 1, 2017). The record suggests, however, that witnesses possibly testified on that date, *i.e.*, Dr. Segreti and/or Phillips’ mother. Given that Dr. Segreti was an expert witness for Phillips in her medical negligence action, we are hard-pressed to understand her failure to include his testimony – or at least a summary thereof – in the record on appeal. We further note that the appellant’s brief¹ makes no mention of Dr. Segreti, in seeming violation of Rule 341. *E.g.*, Ill. S. Ct. R. 341(h)(6) (the statement of facts “shall contain the facts necessary to an

¹ Phillips did not file a reply brief in this appeal.

understanding of the case”).

¶ 36 Because Phillips has failed to include in the record all of the relevant evidence which was actually presented to the jury, we do not have an adequate basis for concluding that the verdict was against the manifest weight of the evidence. See, e.g., *Han v. Holloway*, 408 Ill. App. 3d 387, 390 (2011) (stating that without a transcript of the plaintiff’s trial testimony, the appellate court could not determine whether the trial court erred in denying the plaintiff’s motion for a new trial and motion for a directed verdict); *Mother Earth, Ltd. v. Strawberry Camel, Ltd.*, 98 Ill. App. 3d 518, 522 (1981) (noting that “[s]ince the entire record is not before this court for review, we must presume that the proof presented below was sufficient to support the trial court’s decision to order a new trial on all the issues”).

¶ 37 Even assuming that the deficiencies in the record do not preclude our effective review, we nevertheless conclude that the verdict was not against the manifest weight of the evidence. “To sustain an action for medical negligence, [a] plaintiff must show: (1) the standard of care in the medical community by which the physician’s treatment was measured; (2) that the physician deviated from the standard of care; and (3) that a resulting injury was proximately caused by the deviation from the standard of care.” *Johnson v. Ingalls Memorial Hospital*, 402 Ill. App. 3d 830, 843 (2010), citing *Purtill v. Hess*, 111 Ill. 2d 229, 241-42 (1986). Accord *Robinson*, 402 Ill. App. 3d at 408 (providing that a plaintiff in a medical malpractice action bears the burden of proving the breach of the standard of care proximately caused the injuries at issue).

¶ 38 Laypersons normally are not qualified to evaluate professional medical conduct. *Suttle ex rel. Central Trust Bank v. Lake Forest Hospital*, 315 Ill. App. 3d 96, 102 (2000). “Unless the physician’s negligence is so grossly apparent or the treatment so common as to be within the everyday knowledge of a layperson, expert medical testimony is required to establish the

standard of care and the defendant physician's deviation from that standard." *Purtill*, 111 Ill. 2d at 242. The plaintiff must also prove "that it is more probably true than not true that a defendant's negligence was a proximate cause of the plaintiff's injury." *Pantaleo*, 297 Ill. App. 3d at 275. "Proximate cause must be established by expert testimony to a reasonable degree of medical certainty, and the causal connection must not be 'contingent, speculative, or merely possible.'" *Johnson*, 402 Ill. App. 3d at 843. Accord *Suttle*, 315 Ill. App. 3d at 102-03 (noting that a plaintiff must present expert testimony establishing the applicable standard of care, a deviation from the standard, and the resulting injury).

¶ 39 In her appellate brief, Phillips does not advance any arguments relating to the standard of care or any deviation therefrom. Such arguments are thus waived. Ill. S. Ct. R. 341(h)(7).

In any event, following the reasoning of *Taber v. Ausman*, 388 Ill. App. 3d 398, 409 (2009), the general verdict in the instant case is "beyond review," because in the absence of special interrogatories, we cannot determine whether the jury decided in Northwestern's favor based on the evidence that there was no deviation from the standard of care. In other words, it is possible that the jury decided that Northwestern was not negligent, and therefore never reached the question of proximate cause. *E.g.*, *Jones v. Beck*, 2014 IL App (1st) 131124, ¶ 30.

¶ 40 Even if the standard of care argument was properly presented for review, we would nevertheless affirm the jury verdict. Dr. Ondrula, a medical expert for Phillips, testified that Dr. Rink deviated from the standard of care in a number of respects, *e.g.*, by failing to seek guidance from a more senior physician and by not ordering a radiographic study. Dr. Ondrula recognized, however, that the standard of care did not require a CT scan or x-ray prior to a drain removal. When testifying regarding the removal of a drain after a pancreatectomy, Dr. Ondrula acknowledged that he had never obtained a radiology study to determine the location of a drain

or taken a patient to an operating room.

¶ 41 We also note that Dr. Ondrula’s opinions regarding the standard of care were directly countered by the testimony of one of Northwestern’s experts, Dr. Peckler, as well as certain testimony of Drs. Bentrem and Rink. For example, Dr. Bentrem testified that it was not the standard of care to order CT scans or other imaging prior to drain removal, and that he had never moved a patient to an operating room to surgically remove a JP drain following a distal pancreatectomy. We further observe that Dr. Rink testified that he did not use excessive force and that the JP drain was removed easily, and Dr. Peckler testified that the silicone drain “peels off of anything.” While we recognize that Phillips (and possibly her mother) testified regarding the pain she experienced as Dr. Rink “yanked” the drain, the jury may have discounted her subjective experience as a patient who had never experienced or witnessed a JP drain removal. When evidence is conflicting, “it is within the jury’s province to resolve the conflict.” *Suttle*, 315 Ill. App. 3d at 103.

¶ 42 In any event, we conclude that there was insufficient evidence to support a causal nexus between any alleged deviations from the standard of care by Dr. Rink and the complications experienced by Phillips. Phillips alleged that, because she was asymptomatic until after the removal of the JP drain, the manner in which the drain was removed caused her medical problems. As this court has recognized, however, “[c]orrelation and causation are hardly synonymous.” *Hussung v. Patel*, 369 Ill. App. 3d 924, 933 (2007), quoting *Lasley v. Georgetown University*, 688 A. 2d 1381, 1387 (D.C. App. 1997). In *Hussung*, the appellate court rejected the plaintiff’s argument that the “remarkable” temporal relationship between the administration of a steroid injection and her injuries was sufficient to support an inference of causation. *Id.* In the instant case, the short period of time between the drain removal and

Phillips' subsequent hospitalization does not inexorably lead to the conclusion that Dr. Rink's conduct *caused* the complications. For example, while Dr. Zar testified that the removal of the JP drain could have allowed enterobacter to collect and multiply, he opined that the *manner* in which the drain was removed did not result in injury to Phillips.

¶ 43 Phillips also cites *Reardon v. Bonutti Orthopaedic Services, Ltd.*, 316 Ill. App. 3d 699, 713 (2000), in which the appellate court in a medical malpractice case vacated the jury verdict in favor of the defendants and remanded for a new trial. The appellate court in *Reardon* observed that the consensus of the physicians who testified supported the plaintiff's theory of the case. *Id.* at 711. Unlike in *Reardon*, however, the record is clear that the other experts – including Dr. Ondrula – disagreed with Dr. Segreti's apparent opinion that Phillips' bowel was injured during the drain removal. Based on our review of the trial transcript, we also reject Phillips' contention that "the defense experts contradict each other."

¶ 44 While Dr. Ondrula believed it was more likely that the *pancreas* (and not the bowel) was injured as a result of the drain removal, his testimony regarding how such injury may have occurred was speculative, *e.g.*, the drain tube may have snagged on a surgical staple. Furthermore, the testimony of other witnesses supported the defense theory that Phillips experienced recognized post-surgical complications. As Dr. Peckler observed, pancreatic surgeries are "among the most treacherous operations that are undertaken." Dr. Ondrula acknowledged that pancreatic fistulas are a recognized complication of pancreatic surgery and that "even without any injury to the pancreas as a result of drain removal, there is a recognized and significant incidence of post-pancreatectomy infection."

¶ 45 Based on the foregoing, we conclude that the jury verdict in favor of Northwestern was not against the manifest weight of the evidence.

¶ 46

CONCLUSION

¶ 47 The judgment of the circuit court of Cook County in favor of Northwestern and against Phillips is affirmed in its entirety.

¶ 48 Affirmed.