

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).

2017 IL App (3d) 160521-U

Order filed August 18, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

KATHERINE HASTINGS,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	LaSalle County, Illinois.
)	
v.)	
)	Appeal No. 3-16-0521
CITY OF SANDWICH, a municipal)	Circuit No. 12-L-36
Corporation, and NORTHERN ILLINOIS)	
GAS COMPANY, d/b/a NICOR GAS)	
COMPANY, a corporation,)	Honorable
)	Eugene P. Daugherty
Defendants-Appellees.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err when it barred evidence of medical records and expenses plaintiff failed to causally connect to the injury at issue and when it sustained the defendants' objection to the plaintiff's question of a witness requiring speculation to answer.

¶ 2 Plaintiff Katherine Hastings brought a negligence action against defendants City of Sandwich and Northern Illinois Gas Company, d/b/a Nicor Gas Co., for injuries she sustained

when she fell into an uncovered Nicor utility access box. Following a trial, the jury returned a verdict in favor of Sandwich and Nicor and against Hastings. She appealed. We affirm.

¶ 3

FACTS

¶ 4

On September 19, 2011, plaintiff Katherine Hastings injured her left ankle at home when she fell while cutting down a tree branch. On September 21, 2011, Hastings had a scheduled appointment with her doctor, Beverlee Brisbin, to check on a knee injury she had sustained in August 2011. At the appointment, Hastings told Brisbin about her recent ankle injury and said her ankle felt fine. Brisbin examined Hastings and x-rayed the injured area, and prescribed a walking boot and compression stocking.

¶ 5

On September 22, 2011, Hastings walked her dogs and attended physical therapy for a back injury. While walking home from physical therapy, Hastings stopped at a garage sale, where she bought several items. She left her purchases at the sale and returned in her car with her daughter, Lacey Hastings, to pick them up. Hastings retrieved her items and was carrying a metal milk carton about 12 to 12-1/2 inches in size when she stepped into a hole in the parkway with her left foot and fell. Hastings was taken by ambulance to the hospital where she was treated and released. She saw Brisbin the next day.

¶ 6

In March 2012, Hastings filed a complaint alleging negligence against both defendants for their failure, *inter alia*, to properly maintain the utility access box. Both defendants filed answers and asserted affirmative defenses, including contributory negligence, tort immunity, and joint and several liability. A jury trial was scheduled. Prior to trial, Sandwich and Nicor filed motions *in limine* to bar any evidence of medical treatment and costs incurred by Hastings after September 22, the date of the fall. The trial court granted the motions *in limine*. Hastings filed a motion to reconsider the decision to bar the post-September 22 medical evidence. Attached were

the discovery depositions of Brisbin and Shane York, a podiatrist who treated Hastings on Brisbin's referral.

¶ 7 Brisbin's deposition revealed that she could not distinguish between the treatment necessary for Hastings's September 19 injuries and the treatment needed for her September 22 injury. She had no opinion whether Hastings's injuries were caused by either the incident on the 19th or the 22th. York's evidence deposition provided that he first treated Hastings in January 2012, on referral from Brisbin. He opined that either the September 19 or September 22 injury could have contributed to her continued pain and ongoing treatment. He had no opinion which incident caused the injury or which one could have aggravated a pre-existing condition. He would have provided the same treatment for both incidents and stated it was impossible for him to determine which of the two injuries caused Hastings's continued medical problems. The trial court found the evidence depositions did not change its determination that neither doctor could testify that Hastings's injuries were caused by her fall into the utility access box. The trial court denied the motion to reconsider.

¶ 8 The case proceeded to trial. The Sandwich police sergeant who responded to the fall described that when he arrived, Hastings was sitting on the curb, looked like she was in pain, but did not display any injuries. The superintendent of public works for Sandwich at the time of the fall was dispatched to the corner of Second and Eddy streets on September 22, 2011, in response to a report that someone had stepped into a hole. He barricaded the hole, which he determined to be a Nicor utility access box, and notified Nicor, which replaced the cover. The utility access boxes measured approximately 19 inches in depth and six and one-half inches in diameter and were too small to fit an entire leg.

¶ 9 Emily Staton was sitting in the car with Lacey when Hastings fell. Hastings was wearing what appeared to be a wrap or support on her left ankle. On cross-examination, Staton admitted Hastings approached her about testifying in the case and offered to help Staton financially if she would testify favorably to Hastings. She denied Hastings said she would compensate her from the proceeds she received in the instant action as she had stated in her deposition. On redirect examination, Hastings attempted to ask Staton whether she believed Hastings was going to pay her. The defense objected and the trial court sustained the objection, finding Staton’s belief was irrelevant. The following exchange occurred:

“[PLAINTIFF’S COUNSEL]: Ms. Staton, did you believe that Ms. Hastings was going to

actually give you any money?

THE WITNESS: No.

[DEFENSE COUNSEL]: I’m going to object to the form of the question.

THE COURT: Sustained. I think her belief is irrelevant. And ladies and gentlemen, you’re

instructed to disregard that.

[PLAINTIFF’S COUNSEL]: Your Honor, I think her belief is relevant because the defendant is trying to cast doubt upon her testimony.

THE COURT: I’ve ruled.”

Staton explained Hastings’s offer was “to help like a good neighbor would want to.”

¶ 10 Hastings testified that she saw Brisbin on September 21, 2011, as a follow-up for her August 2011 knee injury. At that visit, she informed Brisbin that she had also injured her left ankle two days earlier by scraping it on some rocks after falling while she was cutting down tree

branches. She was not concerned about the ankle injury because she felt fine. Brisbin gave her a boot, which she did not wear, and a compression sock, which she did wear.

¶ 11 On September 22, 2011, Hastings walked her dogs for two or three miles and then walked to physical therapy for a 2007 back injury. On her way home from physical therapy she stopped at a garage sale on Eddy Street. She later returned to the sale in a car with her daughter to pick up some items she bought. She was carrying a metal milk box approximately 18” in size back to the car when she stepped off the curb, turned around to speak to someone, and went flying in the air when she turned back around and put her left foot down. She fell into a hole which she had not previously seen. Her entire leg was in the hole and she could not pull it out. She experienced a throbbing pain at the top of her foot and could not walk on her left foot. She was transported to the hospital by ambulance, where she was treated and released. The total cost for her emergency room treatment was \$3,159.63. All the bills had been paid.

¶ 12 Hastings denied that she offered money or financial assistance to Staton in exchange for favorable testimony. When she offered to help Staton, Hastings was referring to help such as when she had let Staton borrow her ladder. Hastings submitted several exhibits as offers of proof, including the curriculum vitae of doctors Brisbin and York, the transcripts of their discovery depositions and summaries of Hastings’s proposed testimony regarding post-September 22 treatment and bills.

¶ 13 The defense presented testimony of the paramedic and the emergency room nurse who treated Hastings. She reported her pain as 10 out of 10, however, that claim did not correlate to her vital signs, which were normal, including her blood pressure. She had no edema, also unusual given Hastings’s pain complaint, and no signs of trauma. X-rays were taken. The doctor’s report indicated that there was a small abrasion or contusion on Hastings’s tibia and

fibula and noted an old wound healing on her left ankle. Hastings was discharged with an Ace bandage and crutches.

¶ 14 George Holmes testified via videotaped evidence deposition. An orthopedic surgeon, the defendants retained him to review Hastings's medical treatment records and he personally examined Hastings in December 2015. He also reviewed deposition transcripts and other documents and evidence. In Holmes's opinion, the September 22 fall did not cause any injury or aggravate a pre-existing injury or condition. He testified that Hastings's medical records showed there was no change in Hastings's status as a result of the September 22 injury. In his view, there was "only one ankle injury and that occurred on the 19th."

¶ 15 Beverlee Brisbin also testified via videotaped evidence deposition. She saw Hastings on September 21 as a follow up for a prior knee injury. Hastings said she also hurt her left foot and ankle. She examined Hastings's foot and ankle and took x-rays. Hastings was able to put weight on her foot but walked with a limp. The outside part of her ankle was a bit swollen and bruised. Brisbin concluded Hastings had a contusion or possible fracture. She gave Hastings a compression sock and hard-soled boot to use. When she saw Hastings again on September 23, 2011. Hastings reported that she had stepped into a hole with her left foot the previous night and twisted her foot. Hastings's ankle was mildly swollen and red "in the same region" as her prior injury. Brisbin provided a cam walker, restricted Hastings to light activity and told her she could use crutches if she wanted. Brisbin's medical records stated Hastings's injuries to her left foot and ankle were the same on September 23 as on September 21.

¶ 16 The jury returned a verdict against Hastings and in favor of Sandwich and Nicor. Hastings moved for a new trial, which the trial court denied. Hastings appealed.

¶ 17 ANALYSIS

¶ 18 Hastings raises two issues on appeal: the trial court’s refusal to allow evidence of post-fall medical treatment and expenses and inquiry into a witness’s belief regarding the plaintiff’s offer to pay her.

¶ 19 We turn first to the question of whether the trial court erred when it barred any evidence of Hastings’s post-September 22, 2011, treatment and medical expenses. Hastings argues that she was denied a fair trial when the trial court held the evidence inadmissible based on its finding that Hastings failed to present medical testimony connecting the treatment to her September 22 fall. According to Hastings, her testimony, the testimony of her treating doctors, Brisbin and York, and the circumstantial evidence she submitted were sufficient to establish causation.

¶ 20 To recover medical expenses, a plaintiff has the burden to establish she has paid or is liable to pay the bills, she incurred the medical expenses because of the injuries sustained as a result of defendant’s negligence, and that the charges were reasonable. *Arthur v. Catour*, 216 Ill. 2d 72, 81-82 (2005) (quoting *Baker v. Hutson*, 333 Ill. App. 3d 486, 493 (2002)). Testimony about a plaintiff’s medical condition must be supported by evidence that connects the condition with the conduct of the defendant. *Voykin v. Estate of DeBoer*, 192 Ill. 2d 49, 56 (2000). This court will not reverse a trial court’s refusal to admit evidence absent an abuse of discretion. *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 377 (2003).

¶ 21 The trial concluded that Hastings was unable to satisfy the foundational requirements needed for the admission of evidence of her medical treatment and expenses after September 22, 2011. The trial court pointed to the lack of testimony by either Brisbin or York that Hastings’s injuries were caused by or resulted from the negligence of Sandwich or Nicor. At their depositions, neither Brisbin nor York were able to distinguish whether any portion of Hastings’s ankle and foot injuries were attributable to the September 22 fall independent of the September

19 injury. Brisbin examined Hastings the day before and the day after the fall and testified that she could not see any significant difference in the injuries between Hastings's September 21 visit and her September 23 visit and could not distinguish between them. Similarly, York was unable to differentiate whether any part of Hastings's injuries occurred as a result of the September 22 fall as opposed to her prior injury of the same foot and ankle.

¶ 22 Both Brisbin and York were unable to connect Hastings's post-September 22 medical treatment with the September 21 fall. They both indicated that it was possible that the fall caused Hastings's injury, but they could not distinguish it from the earlier similar injury, also the result of a fall. Hastings's testimony that the injuries to her ankle and foot were the result of the fall on September 22 was not sufficient by itself to establish causation. See *Abrams v. City of Mattoon*, 148 Ill. App. 3d 657, 665 (1986) (lay testimony insufficient to establish a causal connection where preexisting injury might be cause of injury at issue). Lacking adequate medical testimony establishing causation between the defendants' alleged negligence and Hastings's injuries, the jury would be required to improperly speculate as to causation. We find the trial court did not err in barring any testimony or other evidence regarding Hastings's post-September 22 treatment or expenses based on lack of foundation.

¶ 23 We next address Hastings's claim that the trial court erred when it sustained the defense objection into inquiry about Staton's belief regarding whether Hastings would pay her for testifying. Hastings argues that she should have been allowed to question Staton about the witness's belief regarding Hastings would pay her. Hastings further argues that the trial court's refusal to allow her to rehabilitate Staton denied her a fair trial.

¶ 24 “ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than

it would be without the evidence.” IL R. Evid. 401 (eff. Jan. 1, 2011). Testimony based on “guess, surmise, or conjecture” is not relevant as it does not make the existence of any determinative fact more or less probable. *Petraski v. Thedos*, 382 Ill. App. 3d 22, 27 (2008). Where a witness’s answer is speculative and without probative value, it should not be allowed. *Gowdy v. Richter*, 20 Ill. App. 3d 514, 529 (1974). Where cross-examination suggests that a witness is biased, the party offering the witness is entitled to rehabilitate her on redirect examination. *People v. Dall*, 207 Ill. App. 3d 508, 525 (1991). Where the witness offers reasons that genuinely tend to rehabilitate her, the reasons for the bias are relevant and properly subject to examination on redirect. *People v. Burke*, 52 Ill. App. 2d 159, 161 (1964). This court reviews a trial court’s ruling regarding the admissibility of testimony for an abuse of discretion. *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶23.

¶ 25 On redirect, the trial court sustained the defense objection to the following question: “Ms. Staton, did you believe that Ms. Hastings was going to actually give you any money.” As the trial court ruled, Staton’s belief was not relevant. It did not make the existence of a determinative fact more or less probable. Any answer to this question necessarily required the witness to speculate regarding Hastings’s future action or inaction. The question posed did not probe bias but invited conjecture by the witness as to Hastings’s intentions. Staton was rehabilitated when she later explained that Hastings’s offer was to help like any good neighbor. We find the trial court did not err in sustaining the defense objection and rejecting Hastings’s proposed rehabilitation. Any answer would require Staton to imagine what Hastings was going to do. Such speculation is not proper.

¶ 26

CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of LaSalle County is affirmed.

¶ 28 Affirmed.