2017 IL App (5th) 150435-U

NO. 5-15-0435

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

VIKKI HENLEY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant/Cross-Appellee,	)	Massac County.
	)	
v.	)	No. 07-L-28
	)	
KRISTI SCHAAF and SALADINO, OAKES & SCHAAF, a Professional Limited Liability Company,	)	
	)	
Defendants-Appellees/Separate Appellees/ Cross-Appellants/Separate Cross-Appellants	)	
	)	Honorable
(George R. Ripplinger and Ripplinger & Zimmer, LLC, Separate Appellants/Separate Cross-Appellees).	)	Mark H. Clarke, Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The decisions of the circuit court are affirmed where the plaintiff-appellant forfeited her right to appeal the court's evidentiary rulings because she failed to request a new trial in her posttrial motion; the court's ruling and instructions to the jury that the city did not have actual notice of the dangerous condition posed by the tree was not erroneous; the court did not err in instructing the jury on sole proximate cause; the court did not err in determining that the discovery infractions warranted the sanctions imposed on her; and the court did not err by allowing certain items on defendants' bill of costs.

The decisions of the circuit court are affirmed in the plaintiff-appellant's attorney's separate appeal where he was not denied his procedural due process because he was not found in contempt by the January 10, 2014, order; the court's January 14, 2014, order granting sanctions was not contrary to the weight of the evidence; and the May 5, 2014, order of adjudication of direct criminal contempt was supported by sufficient evidence of willful and deliberate violation of court orders.

The decision of the circuit court is affirmed where the trial court did not abuse its discretion in determining that no monetary sanction was necessary in light of a satisfactory resolution to the case.

¶ 2 This case began as a legal malpractice action, wherein the plaintiff, Vikki Henley (Henley), alleged that the defendants, Kristi Schaaf and her law firm, Saladino, Oakes and Schaaf, LLC (Schaaf or the defendants), failed to file suit against the City of Metropolis (city) within the applicable statute of limitations. The trial court bifurcated the trial, requiring Henley to prove that the unfiled and time-barred underlying claim against the city would have been successful before any proof of the alleged legal malpractice was submitted to a jury for a decision.

¶ 3 In the underlying claim, Henley alleged that she was injured in a vehicle collision on July 22, 2006, when another driver, Linda Sutton, failed to stop at a stop sign and collided with her in Metropolis, Illinois. She asserted that a cedar tree blocked Sutton's view of the stop sign on the date of the collision and that the city was at fault in causing her injuries because it did not cut down or timely trim the tree that allegedly obscured Sutton's view of the stop sign. The trial on the underlying claim resulted in two mistrials because the juries could not reach a unanimous verdict. The third trial, which is the subject of Henley's appeal, resulted in a defense verdict. Henley's counsel, George

Ripplinger (Ripplinger), filed a separate appeal in this case, and Schaaf cross-appealed. We will address the appeals in turn.

¶ 4 I. HENLEY'S APPEAL

¶ 5 Henley appeals from the order of the circuit court of Massac County entering a judgment for Schaaf on the jury's verdict. Henley raises numerous issues on appeal, which we restate as follows: (1) whether the circuit court erred by denying her the opportunity to present an expert witness and other witnesses in the third trial of this case; (2) whether the court erred in denying her motion to bar Schaaf's expert witness, Kenneth Agent, and in setting aside the order limiting Agent's testimony before the first trial; (3) whether the court erred in barring the use and introduction of a video and still taken by a television cameraman on the day of the collision; (4) whether the court's rulings and instructions to the jury that the city did not have actual notice of the dangerous condition posed by the tree planted in front of the stop sign and had no duty to inspect the stop sign on a regular basis was reversible error; (5) whether the court erred in allowing testimony about her prior heart condition and her lawsuit against "Phen Phen" manufacturers; (6) whether the court erred in allowing testimony about her subsequent automobile collision, the injures she sustained in that collision, and evidence that a lawsuit had been filed as a result of that collision; (7) whether the court erred in imposing sanctions on her; (8) whether the court erred in instructing the jury on sole proximate cause; (9) whether the court erred in allowing items on Schaaf's bill of costs that were not allowable; and, (10) if this court reverses the verdict and remands the case for a new trial, whether the case should be assigned to a different judge outside the first judicial circuit.

¶ 6 Three trials were held on the underlying claim. The jury was unable to reach a verdict in the first two trials. The first trial was held from August 20 to September 3, 2012, before the Honorable Joseph Leberman. Judge Leberman recused himself on March 18, 2014, and the case was assigned to the Honorable Mark Clarke. The second trial was held from April 29 to May 8, 2014. By stipulation of the parties, the third trial, which is the subject of this appeal, was held in Williamson County from May 12 to May 19, 2015. The following evidence was presented at the third trial.

¶ 7 On July 22, 2006, Henley was travelling west in the curb lane of a four-lane highway, U.S. 45/East Fifth Street. Sutton, who was travelling north on a two-lane side street, Metropolis Street, entered this intersection (the intersection) without stopping.

¶ 8 In her deposition, Sutton testified that she crossed three lanes of traffic, two eastbound and one westbound, without braking or reacting to Henley's vehicle approaching from the right. She testified that she did not stop at the intersection's stop sign because she did not see it, as her view was obscured by a red truck and a tree limb. However, she acknowledged that she had been to Metropolis many times and knew that the main thoroughfare was intersected by many side streets that were secondary roads and that the drivers on the secondary roads had to stop before entering the main road. She also acknowledged that she knew that her trip home would require her to drive from the secondary roads to the thoroughfare.

¶ 9 Henley testified that, on the day of the collision, she was heading home from Sonic when she approached the intersection at Metropolis and Fifth Street and saw that a vehicle was already in the intersection. Although she braked and swerved in an attempt

to avoid the vehicle, the vehicles collided. She testified that she exited her vehicle and spoke to the other driver, Sutton, and that the medics then arrived. She was taken to the hospital and was told that she had a sprained neck and lumbar spine. She was released from the hospital that same day.

¶ 10 Henley testified that approximately 12 weeks after the accident, she returned to the scene and noted that the stop sign on the northbound approach to the intersection was partially obscured by a cedar tree. She stated that she was not able to see the stop sign "until [she] got very, very close." She returned to the scene again on August 20 and 28 to take some pictures of the area, some of which were published to the jury as exhibits. She also testified about her injuries, continuing pain, and medical expenses resulting from the accident.

¶ 11 Officer James Corry of the Metropolis police department investigated the accident. He testified that when he interviewed Sutton, she did not mention any obstruction to the stop sign on Metropolis Street controlling northbound traffic. She was given a ticket for "failure to yield at intersection" rather than a "stop sign ticket" because "prior to the impact, [she] had crossed three lanes of traffic, which would have left her more than enough time to stop." She pled guilty to the citation and paid a $75 fine on August 16, 2006.

¶ 12 Corry testified that he did not observe an obstruction to the northbound stop sign, nor did anyone report or complain to him that there was a problem with the visibility of the stop sign either before or after the accident. He stated that, if he had received such a

report, he would have investigated the problem and reported it to the proper department head so that a team could be dispatched to correct it.

¶ 13 Heather Wepsiec, an attorney employed by Sutton's insurer, Farmer's, investigated the accident on Sutton's behalf on July 28, 2006, six days after the accident. Wepsiec testified that she drove northbound on Metropolis Avenue, retracing Sutton's path on the day of the accident. She stated that if a driver was "substantially far enough back [from the intersection]" the stop sign was difficult to see, but as she approached the intersection at the 30 mile-per-hour speed limit, she "had no difficulty whatsoever seeing the stop sign and stopping in advance of the intersection." She testified that she did not take any measurements or photographs because "it seemed pretty apparent" that Sutton was liable for the accident. She confirmed that the defendants' exhibits, photographs taken in the spring of 2007, accurately depicted the relationship between the cedar tree and the northbound stop sign as they existed on the day she was there.

¶ 14 Clyde Wills, the editor and publisher of the weekly newspaper in Metropolis, testified in his deposition that he heard the accident from his office located 100 feet away. Based on his observations that day and on his return visit the next day, he estimated that, at approximately 200 feet away from the intersection, the stop sign was partially visible; and at approximately 150 feet away from the intersection, the stop sign was completely visible. He confirmed that the defendants' exhibit photographs accurately depicted the relationship between the cedar tree and the stop sign on the northbound approach to the intersection on the day of the accident, despite the fact that the photographs were taken at a different time of year.

¶ 15 Emily (Farmer) Loftus testified that her childhood home was near the intersection of Metropolis Street and Fifth Street and that she lived there in 2006. She examined the plaintiff's exhibit photographs and testified that each photograph accurately represented the area in question as it was in July 2006. She noted that, on plaintiff's exhibit 68, there were three trees between the camera lens and the stop sign and that she could see the "red" but could not read the "stop" in the photograph. She agreed that plaintiff's exhibit 43, the photograph taken from approximately one block away from the stop sign, was taken from such a distance away that a driver would not be looking for a stop sign at that point.

¶ 16 Sandra Farmer testified that she has lived near the intersection of Metropolis Street and Fifth Street for decades. She was also shown plaintiff's exhibit photographs and agreed that they accurately depicted the scene as it appeared in July 2006. She testified that, in the relevant time frame, an evergreen tree had grown up in front of the stop sign and "blocked pretty much all of [it]." She agreed that the closer one got to the stop sign, the more of it was visible, and that at least a portion of the stop sign was visible from the road adjacent to her home. However, she maintained that "[i]t was difficult to see the stop sign."

¶ 17 Gina Dunning, an attorney licensed in both Illinois and Kentucky, testified that she has lived at 420 Metropolis Street, which is on the southwest corner of the intersection with Fifth Street, since 1989. She testified that she planted the cedar tree in the early 1990s. At the time of the accident, she owned a red pickup truck that was normally parked in front of her house, in the parking lane that runs down Metropolis Street. She

parked adjacent to the curb where the cedar tree was planted, facing north. She testified that the branches of the cedar tree never reached the curb line, and she was able to open and extend the curb-side door of the truck over the grass to let her dogs out without the tree stopping the truck's door. Her husband was also able to mow the turf between the curb and the tree. She testified that the stop sign was visible "that whole block" on the day of the accident and confirmed that the defendant's exhibit photographs accurately depicted the relationship between the cedar tree and the stop sign as it existed on the day of the accident. She agreed that between the date of the accident and the date the photographs were taken, no one had trimmed or otherwise changed the appearance of the cedar tree to improve visibility of the stop sign.

¶ 18 Kenneth Agent, an expert witness retained by the defense, testified that he reconstructs traffic accidents and is generally retained months or years after the accident occurs. He testified that, in this case, he reviewed the case material and conducted a site visit on December 29, 2009, where he took measurements in order to do the calculations relevant to this particular accident. He agreed that the cedar tree had been removed when he reconstructed the accident.

¶ 19 Agent testified concerning the generally recognized values of perception/reaction time and braking distance based on physics formulae. He opined that Sutton had ample time to stop before entering the intersection and that the visibility of the stop sign did not contribute to the collision because "the line of sight to the stop sign was dramatically higher than the stopping distance."

¶ 20 Beth Clanahan testified that she was the mayor of Metropolis from 1997 until April 2005. While she was mayor, she received complaints about the intersection at Fifth Street and Metropolis Street and had a tree trimmed as a result of those complaints. She described the tree as an "evergreen" and stated that it was on the city's right-of-way between the sidewalk and the curb, near the stop sign for traffic going north on Metropolis Street at the intersection with Fifth Street. She testified that the tree was trimmed because it was blocking the view of the stop sign and that it was trimmed "several times" during her tenure, the last time probably being in 2004. She testified that during her tenure, the need to trim the tree was discussed on several occasions at committee meetings. She acknowledged that there were two other trees in the same area that crews had trimmed in the past because their limbs extended over the sidewalk area.

¶ 21 Billy McDaniel succeeded Clanahan as mayor of Metropolis in April of 2005. McDaniel testified that the city had a means by which the growth of foliage was addressed from a public safety standpoint. He noted that information would come from multiple sources, such as police, city employees, and citizens. He testified that, when he took office, Clanahan did not tell him that the cedar tree at the intersection needed to be trimmed on a regular basis. During his tenure, he never received any complaints from city employees or citizens about the stop sign's visibility; nor did he ever notice problems with the visibility of the stop sign. Even after the accident, he was not contacted about a problem with the visibility of the stop sign due to the tree.

¶ 22 The procedural history of this case is as follows. After the July 22, 2006, collision, Henley retained Schaaf and her law firm to represent her in her claims for

damages. However, Schaaf told Henley that she would not sue Dunning over the alleged obstruction to the stop sign. Schaaf did not file a cause of action on Henley's behalf against the city within the applicable statute of limitations. Henley hired her present counsel on September 5, 2007, and notified Schaaf that she was terminated on September 6, 2007.

¶ 23 Henley's complaint against Schaaf and Dunning was filed on November 16, 2007, and amended four days later.[1] Henley's complaint alleged, in part, that Schaaf and her law firm negligently failed to file a cause of action against the city within one year of her injury as required by statute (745 ILCS 10/8-101 (West 2008)). On June 23, 2008, Henley was ordered to file an amended complaint restating her claims against her former lawyers. Her second-amended complaint, which was filed on July 2, 2008, has remained the operative statement of her claims in this case.

¶ 24 On December 30, 2010, Schaaf filed a motion for summary judgment, alleging that she cannot be liable for legal malpractice for failing to bring suit against the city because the city is immune from such a suit under the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/2-101 *et seq*. (West 2008)). Schaaf argued that the city did not have actual or constructive notice of an allegedly unsafe condition, *i.e*., the obstructed stop sign.

¶ 25 On April 11, 2011, the trial court denied Schaaf's motion for summary judgment. The court addressed the arguments regarding the city's notice of a dangerous condition,

[1]Henley's claims against Dunning and Sutton were eventually settled.

noting that "[t]he act of trimming the tree was to make the intersection safer" and that "[i]mplying that once a public entity trims a tree, it now has notice of a dangerous condition *** is flawed for several reasons." The court stated that there no longer exists a dangerous condition once the tree is trimmed and that not all trimmed trees will grow back to reobstruct traffic control devices. The court noted that putting the public entity on notice that a dangerous condition exists at the site of every tree trimmed is an unreasonable burden to place on the public entity and that "this interpretation would also, at best, be notice of a potentially dangerous or unsafe condition." (Emphasis in original.) The court further stated that "[t]he notice must be of a condition that, at the time the notice is received, happens to be dangerous or unsafe." However, the court found that Henley minimally met her burden of showing that a factual issue exists as to whether or not the city had constructive notice that the stop sign was obstructed.

¶ 26 On July 10, 2012, the trial court granted Schaaf's motions *in limine* on the issue of actual notice, prohibiting Henley from offering evidence or arguing that (1) the city created a dangerous condition by virtue of any previous tree trimming; (2) the city had actual notice of any dangerous or unsafe condition by virtue of any previous tree trimming; and (3) the city was on notice of a dangerous condition merely because the tree existed at a particular location. Henley was not prohibited from offering evidence of constructive notice or evidence that someone provided actual notice to the city of any dangerous condition that existed in the "reasonably relevant" time period before July 22, 2006. However, Henley admitted before the first trial that she had no living witness to offer evidence of actual notice.

¶ 27 The trial court also denied a motion *in limine* seeking to bar evidence of prior and subsequent accidents at the intersection, but noted that "any such evidence must have a substantial degree of similarity with the accident in question." The court granted Schaaf's motion *in limine* seeking to bar testimony or evidence that the intersection was dangerous or hazardous based on other accidents that occurred there, and testimony concerning "near misses," "close calls," and "driver confusion," absent evidence that an obstruction of the stop sign was involved in causing the other accidents. Also excluded were opinions from lay witnesses that the intersection was "dangerous."

¶ 28 The case was stymied by multiple continuances. Judge Leberman signed a pretrial order on April 12, 2012, setting the case for trial on August 20, 2012. The order stated that "**Discovery has been completed. No additional discovery is allowed without leave of court.**" (Emphasis in original.) Henley sought no amendment of or relief from this order before trial.

¶ 29 On August 13, 2012, Henley was in another automobile accident in Kentucky. She concealed this information from Schaaf and the court; as such, no evidence regarding the Kentucky accident was offered or presented in the first trial. The first trial resulted in a mistrial.

¶ 30 One week after declaring the mistrial on August 30, 2012, Judge Leberman set a case management conference on October 23, 2012, which was continued to November 9, 2012, on Henley's motion. On that date, Judge Leberman ordered mediation and reset the case for trial on April 22, 2013. The judge also informed Henley's counsel, Ripplinger, that the court was considering filing a petition for contempt based on his conduct during

trial, including "intentional and contumacious" violations of the court's *in limine* orders. The court noted that if it ended up filing the petition, "it [would] be in writing, [Ripplinger] [would] get notice, and [he would] have an opportunity to address any issues that [the court had] in that."

¶ 31 The December 17, 2012, mediation was unsuccessful. On January 22, 2013, Henley served supplemental disclosures on the defendants, listing previously undisclosed witnesses that she intended to call at retrial, including: Larry Grace, Jason McManus, Mayna Craggs, Dr. Randy Oliver, Helen Goddard, Heather Spurlin, Mark Mizell, Christina Henley, and all of Henley's treating physicians. Henley also submitted an amended disclosure of controlled expert witnesses, naming Fred Hanscom, a highway engineer and accident reconstructionist. Schaaf objected to the additional witnesses.

¶ 32 On February 13, 2013, Henley served supplemental discovery responses that included additional medical records and bills. This supplement included a therapist's note dated August 14, 2012, stating that Henley had been in another car accident and noting that Henley intended to call her attorney about the new situation.

¶ 33 At a hearing on February 21, 2013, Judge Leberman ruled that both parties needed to obtain leave of court to identify and present witnesses at the second trial that had not been previously identified or called to testify in the first trial. In an order dated that same day, the court ruled that Henley's previously undisclosed witnesses would not be allowed to testify without further order of the court.

¶ 34 On March 13, 2013, Henley filed her fourth motion *in limine*, seeking to bar evidence concerning the Kentucky accident.

¶ 35 On March 19, 2013, Henley filed her motion to file a third-amended complaint. The trial court denied the motion by docket entry dated August 2, 2013, noting that "[t]he proposed complaint misstates the court's previous rulings."

¶ 36 On April 2, 2013, Schaaf filed her first motion for sanctions pursuant to Illinois Supreme Court Rule 219(c) (eff. July 1, 2002), for Henley's "contumacious disregard for the authority of the Court and deliberate withholding of discoverable information" about the Kentucky accident in which she sustained personal injuries. Schaaf attached the July 17, 2013, discovery deposition of Henley's physician, Dr. Rex Arendall.

¶ 37 Also on April 2, 2013, the court found that Henley did not timely disclose the Kentucky accident to Schaaf, and gave Schaaf leave to pursue an expert for the purpose of presenting evidence that Henley's second car accident resulted in injuries that were relevant to causation or damages. On April 9, 2013, the trial was again continued.

¶ 38 On April 15, 2013, Henley filed a motion to present witnesses at trial and to reopen discovery on a limited basis, again requesting permission to add the same witnesses and offering to present them for a discovery deposition. Judge Leberman denied the motion on January 14, 2014, finding that Henley did not disclose the witnesses in a timely manner before the first trial; the court noted that the potential witnesses were known to Henley well in advance of the first trial. In response to Henley's argument that she should be allowed to present all of the additional witnesses due to the passage of time, the court noted that most of the delay was due to her failure to disclose her August 13, 2012, accident.

¶ 39 In a separate order filed on January 14, 2014, Judge Leberman sanctioned Ripplinger, noting that he had acknowledged that his client notified him about the Kentucky accident before the start of the first trial. The court held that Ripplinger had a duty as an officer of the court to investigate the facts and circumstances of the Kentucky accident and that "[f]or [Henley]'s counsel to unilaterally and secretly make a determination that the injuries [she] received in August of 2012 were ***not*** relevant was a willful and contumacious act ignoring the duty to timely supplement discovery answers and, further, calculated to deny defendants of a fair trial in this matter." (Emphasis in original.) The court ordered Ripplinger to pay Schaaf's reasonable expenses and attorney fees for the first trial, the mediation, and the expenses incurred in the preparation of the motion for sanctions. As a further sanction, the court denied Henley's motion to present witnesses at trial and to reopen discovery on a limited basis.

¶ 40 In the interim, Henley was ordered to resubmit to a deposition and answer questions about the Kentucky accident. In the September 6, 2013, deposition, Henley was asked whether she had made any type of claim as a result of the Kentucky accident and whether she had hired a lawyer, to which she responded "no." She was asked whether she planned to file any claims as a result of the Kentucky accident beyond the payment of her medical bills; she responded, "I'm not sure yet." She never attempted to correct or amend these responses.

¶ 41 On March 18, 2014, Judge Leberman recused himself "to avoid the appearance of impropriety." That same day, Judge Clarke assigned himself to the case.

¶ 42 Judge Clarke held a case management conference on April 2, 2014, and set the case for a second trial beginning on April 29, 2014. Also on April 2, 2014, Henley filed a motion to add trial witnesses and to vacate the order barring those witnesses for trial. Judge Clarke barred the witnesses in an April 16, 2014, order. The court found that, considering the date of the Rule 213 interrogatories, the date Henley disclosed the witnesses, and when and how the witnesses became known to Henley, the disclosures of the lay and independent expert witnesses were untimely. As to controlled expert witness Fred Hanscom, the court noted that Henley was on notice early on that Schaaf intended to call an accident reconstruction controlled expert witness and that she was free to retain her own accident reconstruction controlled expert witness but, as a matter of strategy, chose not to do so; she "attempted to change her strategy and secure her own expert" only after certain rulings by Judge Leberman set out the permissible parameters of Schaaf's controlled expert witness's testimony. The court found that Henley's disclosure of this witness was untimely.

¶ 43 The court also permitted Schaaf to offer evidence from Dr. Arendall's evidence deposition, holding that his testimony regarding the Kentucky accident, "which the Court found 'relevant to the issue of damages,' " may be presented at the second trial in light of the court's findings in its January 14, 2014, order.

¶ 44 Henley filed a motion to file her fourth-amended complaint on April 7, 2014, but she withdrew the motion at a pretrial hearing on April 22, 2014. At this hearing, the court analyzed the relevant case law regarding the city's duty pursuant to the Act. It distinguished Henley's cited case and concluded that the fact that the city had previously

trimmed the tree was not evidence that it had actual notice that the tree was obstructing motorists' views of the stop sign on or before July 22, 2006. The court also denied Henley's motions to reconsider the granting of defense motions *in limine* 2-B and 2-C, which prohibited evidence or argument during trial that the city had actual notice of the dangerous condition of the tree blocking the stop sign because it had previously trimmed the tree and evidence or argument that the city had actual notice of a dangerous condition in the tree blocking the stop sign based on the location and existence of the tree, respectively.

¶ 45 A series of pretrial orders were entered on April 16, 2014, delineating the admissibility of lay opinion testimony and hearsay testimony. The orders stated that their violation may be punishable as contempt.

¶ 46 The case proceeded to trial on April 29, 2014. Ripplinger again violated *in limine* orders and an order of adjudication of direct criminal contempt was entered against him during the second trial on May 2, 2014. A mistrial was declared on May 8, 2014, after the jury could not reach a verdict.

¶ 47 On June 13, 2014, the parties agreed to transfer the third trial to Williamson County, and trial was set for July 14, 2014. However, on July 14, 2014, the Illinois Supreme Court stayed the proceeding on Henley's motion. After the court removed its stay, the parties conferred on September 9, 2014, and the case was reset for trial on May 11, 2015.

¶ 48 On December 19, 2014, Henley filed her renewed motion to file a fourth-amended complaint, which was heard on January 21, 2015. In a February 2, 2015, order, the trial

court concluded that the new factual allegations and legal theories that Henley asserted in the fourth-amended complaint could have been brought in her second-amended complaint. In denying the motion, the court stated that granting the motion would have a prejudicial effect on the defense. The court also found that Henley's stated goal of the proposed amendment, which was "to state a complaint under the state of the law," does not cure any defect in the pleading "because it does not conform to the law found applicable to this case by this Court."

¶ 49 On December 22, 2014, Henley filed a renewed motion to present witnesses at trial and reopen discovery on a limited basis. She requested permission to present the same witnesses as she had before the second trial. In its February 2, 2015, order denying the motion, the trial court first distinguished the January 14, 2014, order entered by Judge Leberman granting Schaaf's first motion for sanctions from its orders, noting that Judge Leberman had imposed sanctions, including ordering Henley's counsel to pay expenses and attorney fees incurred by the defendants and denying Henley's motion to present witnesses at trial and reopen discovery on a limited basis pursuant to Supreme Court Rule 219. The court stated that "[t]he record is clear that this Court resolved the objections, not in the context of Rule 219 sanctions, and not in furtherance of any deadlines set in previously entered pre-trial orders managing previous trial settings, but pursuant to Rule 213 and 218." The court found that, contrary to Henley's assertions, "discovery had not been 'closed' since 2012" and that, upon review of the nature and timing of Henley's disclosures, it "continues to find non-compliance by [Henley] with Rule 213 and case management orders of this Court" and that based upon the *Sullivan* factors (*Sullivan v.*

Edward Hospital, 209 Ill. 2d 100 (2004)), "substantial justice will continue to be served by not rewarding the persistent gamesmanship employed by Plaintiff's counsel."

¶ 50 On January 16, 2015, Schaaf filed a second motion for sanctions, arguing that Henley again failed to disclose information relevant to the Kentucky accident. Schaaf discovered that on August 13, 2014, Henley had filed an action in a Kentucky circuit court arising out of that automobile collision. In the Kentucky complaint, Henley alleged that she would have future medical expenses and future pain and suffering, and she attributed permanent disability to the Kentucky accident. Schaaf asserted that her previous discovery request covered the scope of Henley's Kentucky lawsuit. Her previous discovery request asked if Henley "ever filed any other suits for your own personal injuries? If so, state the nature of the injuries claimed, the courts and the caption in which filed, the years filed, and the titles and docket number of the suits." Schaaf also made a corresponding request for production of documents and records relevant to that interrogatory. Schaaf requested that Henley be sanctioned due to the failure to appropriately supplement her responses, as "it is part of a pattern of willful failure to disclose regarding the 2012 incident."

¶ 51 On February 19, 2015, the trial court granted Schaaf's second motion for sanctions. The court found that Henley violated her duty pursuant to Supreme Court Rules 213(i) and 214 by failing to seasonably supplement her prior discovery responses to disclose the existence and contents of the pleading filed in Kentucky, which contained statements relevant to her claim for damages in this instance. The court noted that Ripplinger represented that he first heard of the existence of Henley's Kentucky

complaint when he received Schaaf's second motion for sanctions and that the court would "accept this representation made by plaintiff's counsel" but that "repeated violations require an appropriate response." The court ordered Henley to pay Schaaf the costs and attorney fees reasonably related to Schaaf's second motion for sanctions.[2] The court ended its order with the following statement:

> "**PLAINTIFF AND PLAINTIFF'S COUNSEL ARE ADMONISHED THAT THE ILLINOIS SUPREME COURT HAS DESCRIBED JUDICIAL AUTHORITY TO DISMISS A CAUSE OF ACTION WITH PREJUDICE AS 'THE MOST EFFECTIVE SANCTION' AGAINST DISREGARD OF COURT ORDERS AND HAS ACKNOWLEDGED THE INHERENT AUTHORITY OF A CIRCUIT COURT TO DISMISS A CAUSE OF ACTION WITH PREJUDICE FOR FAILURE TO COMPLY WITH COURT ORDERS WHERE THE RECORD SHOWS A DELIBERATE AND CONTINUING DISREGARD FOR THE COURT'S AUTHORITY.**"

[2]The court also ordered that Henley tender to Schaaf records of all communication between Henley and Erica Ross, the no-fault carrier for the at-fault driver in the Kentucky accident, as well as medical records or information that supports Henley's allegations of future damages in her Kentucky litigation, and that Henley tender dates for taking a supplemental deposition of her and any witness having knowledge of her allegation of future damages in her Kentucky litigation.

(Emphasis in original.) An order imposing a $1,500 sanction against Henley for the defendants' attorney fees, costs, and expenses was entered on March 6, 2015.

¶ 52 Henley filed another motion to continue the trial, which was denied on May 6, 2015. The third trial was held from May 12 to May 19, 2015. The parties presented evidence concerning the city's liability and Henley's damages; evidence of the alleged legal malpractice was reserved for a second phase of the case if Henley was successful at this trial. However, the trial resulted in a defense verdict.

¶ 53 Schaaf tendered the "long form" of Illinois Pattern Jury Instructions, Civil, No. 12.04 (IPI Civil 3d No. 12.04), which was submitted to the jury over Henley's offer of the "short form." The jury was also instructed on the city's constructive notice of the visibility of the stop sign.

¶ 54 The jury found that the city would not have been held liable for the accident if Henley had filed a timely lawsuit against the city. By Special Interrogatory No. 1, the jury found that Sutton's conduct was the sole proximate cause of the collision, and by Special Interrogatory No. 2, the jury found that the stop sign was visible to northbound drivers on July 22, 2006. On May 21, 2015, judgment was entered on the jury's verdict.

¶ 55 On May 26, 2015, the trial court entered an order revisiting the question of sanctions. The court found that, because the goal of "[a] trial on the merits with the benefit of full discovery" had been achieved, "entry of such an order awarding attorney fees and costs is no longer necessary, in light of the adequacy of previously imposed and threatened sanctions in achieving the goal of a trial on the merits with the benefit of full

discovery." The court denied Schaaf's motion to award sanctions pursuant to the January 10, 2014, order.

¶ 56 On June 25, 2015, Henley filed a posttrial motion pursuant to the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1202 (West 2012)). She filed an amendment to the motion on August 7, 2015, after the trial transcript was prepared. She requested the following relief:

> "Plaintiff moves the Court to set aside the verdict returned by the jury on May 19, 2015, finding in favor of the Defendants and against the Plaintiff, to vacate the judgment entered by the Court on that verdict on May 21, 2015, and to enter in lieu thereof a judgment in favor of Plaintiff notwithstanding the verdict of the jury and set this cause for trial solely on the question of damages and defendant's liability[.]"

¶ 57 In her motion, Henley argued that the trial court erred in: (1) denying her motions to amend her complaints on March 7, 2013, April 7, 2014, and December 16, 2014; (2) allowing Schaaf to argue that Sutton's conduct was the sole proximate cause of the collision, instructing the jury using the long form of IPI No. 12.04, and allowing a special interrogatory on the sole proximate cause issue; (3) denying her motion to bar Schaaf's expert witness, Kenneth Agent, and in setting aside the order entered July 9, 2012, limiting Agent's testimony regarding the tree, where his testimony invaded the province of the jury and his opinions lacked a proper foundation; (4) allowing testimony regarding her heart condition and her lawsuit against the makers of "Phen Phen" without any evidence of its relevance to her injuries; (5) allowing evidence of her Kentucky accident

without any evidence from a physician that the injuries sustained in that collision had any effect on the injuries that were the subject of this litigation, and denying her motion *in limine* to bar evidence about the Kentucky lawsuit based on the injuries she sustained in that collision; (6) barring witnesses she added after the first trial; (7) allowing conclusory testimony and documents from Heather Wepsieck; (8) barring the evidence deposition testimony of Jason Thomason, the video he took of the collision scene, and the still photo extracted from that video; (9) granting Schaaf's second motion for sanctions, as she did not commit a discovery infraction that prejudiced Schaaf in her ability to present her case; and (10) holding that prior trimming of the tree that blocked Sutton's view of the stop sign was not actual notice, as matter of law, to the city of the dangerous condition created by the tree. She also argued that (11) the jury verdict was contrary to the facts in evidence, particularly the jury's response to Special Interrogatory No. 1; (12) the January 14, 2014, order for sanctions was not supported by the facts or the law; (13) the court's May 21, 2015, order was inaccurate in its recitation of facts and conclusions; and (14) the court erred in allowing defense counsel to question witnesses about what they could or could not see in the photographs admitted into evidence. In conclusion, she reiterated her prayer for relief, stating that "[f]or all of the above reasons, the verdict and judgment in this case should be set aside, and a new trial on plaintiff's damages, and the defendant's liability, should be ordered by this court."

¶ 58 The trial court denied Henley's posttrial motion by written order dated September 11, 2015. The court first noted that Henley's posttrial motion had technical defects, citing "many summary allegations of error without particularly specifying the grounds in

support thereof" and explaining that "[i]t may or may not some day be determined be [*sic*] that Plaintiff's Port [*sic*] trial motion is insufficient to preserve the alleged errors for review, but that question is not before this Court at this time." The court went on to find that (1) the evidence was sufficient to support the jury's findings; (2) the evidence was sufficient to support the court's instructions to the jury regarding sole proximate cause; and (3) with respect to Henley's claims of error regarding her motion to file a fourth-amended complaint, the imposition of discovery sanctions, the evidentiary rulings, the jury instructions and special interrogatories rulings, and the conduct of the trial, the court relied upon the record of the proceedings and the factors cited by the court at the time of the ruling in question. The court found no error in its rulings.

¶ 59 Also on September 11, 2015, the court entered an order assessing and awarding $1,742.05 in costs to the defendants. The court rejected Henley's argument that it was inappropriate to award the costs for the mistrials and stayed trial, noting that "[t]his court and the parties appeared at each setting, for trial." The court further noted that the facts that mistrials were declared in the first two trials and that the July 2014 trial was stayed by order of the Illinois Supreme Court did not change the status of the defendants as a party entitled to costs of suit; nor did it change the nature of the witness fees and mileage charged.

¶ 60 On October 15, 2015, Henley filed her notice of appeal from the May 21, 2015, judgment entered on the jury verdict; the September 11, 2015, denial of her posttrial motion and order assessing and awarding costs to the defendants; the February 19, 2015, order imposing sanctions; and the March 6, 2015, order awarding sanctions against her.

On appeal, Henley substantially reiterates the arguments contained in her posttrial motion. However, because it is dispositive of several issues raised by Henley on appeal, we will first address Schaaf's argument that Henley has forfeited her right to appeal the trial court's evidentiary rulings because she failed to request a new trial in her posttrial motion.

¶ 61 Henley's posttrial motion was filed pursuant to section 2-1202 of the Code (735 ILCS 5/2-1202 (West 2012)). Posttrial motions must specifically state the basis upon which relief is to be granted. 735 ILCS 5/2-1202(b) (West 2012) ("[t]he post-trial motion must contain the points relied upon, particularly specifying the grounds in support thereof"). Moreover, "[a]ny party who fails to seek a new trial in his or her post-trial motion *** waives the right to apply for a new trial, except in cases in which the jury has failed to reach a verdict." 735 ILCS 5/2-1202(e) (West 2012).

¶ 62 At trial, the jury heard evidence regarding the city's liability and Henley's damages; evidence of Schaaf's alleged legal malpractice was reserved for a second phase of the case. However, because the jury found that Sutton's conduct was the sole proximate cause of the collision and that the city would not have been liable had Henley's suit been timely filed, the jury did not reach the issue of Henley's damages.

¶ 63 Henley's posttrial motion requested that the trial court set aside the jury's verdict, vacate the judgment, enter a judgment notwithstanding the verdict in her favor, and set her cause for trial *solely on the question of her damages and Schaaf's liability*. She reiterated her prayer for relief in her conclusion, stating that "the verdict and judgment in this case should be set aside, and a new trial on plaintiff's damages, and the defendant's

liability, should be ordered by this court." This language reflects a request for a judgment nonwithstanding the verdict, *i.e.*, judgment *n.o.v.* There is no language in her posttrial motion requesting a new trial on the city's liability. Nevertheless, she requests in her appellate brief that this court "reverse the verdict of the jury and remand this case to the trial court for trial with appropriate instruction for the conduct of the next trial."

¶ 64 This court is prohibited from granting such relief. Supreme Court Rule 366(b)(2)(iii) states that a party may not urge as error on review of the ruling on the party's posttrial motion any point, ground, or relief not specified in the motion. Ill. S. Ct. R. 366(b)(2)(iii) (eff. Feb. 1, 1994). Thus, Rule 366(b)(2)(iii) prohibits what Henley requests in this case, which is to claim on appeal that the trial court erred in failing to grant her a new trial when she did not request such relief in her posttrial motion.

¶ 65 The Illinois Supreme Court has made clear that there are distinct standards to be used by the trial court in deciding whether to grant a directed verdict, judgment *n.o.v.*, or new trial and that the appellate court must utilize the correct standard in granting or denying the relief sought by the appellant. *Maple v. Gustafson*, 151 Ill. 2d 445, 453, 460 (1992).

¶ 66 Trial courts apply what is known as the *Pedrick* standard when deciding a motion for directed verdict or a motion for judgment *n.o.v.*; under that standard, a directed verdict or judgment *n.o.v.* is properly granted only where "all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand." *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). In ruling on these motions, "a court does

not weigh the evidence, nor is it concerned with the credibility of the witnesses; rather it may only consider the evidence, and any inferences therefrom, in the light most favorable to the party resisting the motion." *Maple*, 151 Ill. 2d at 453. A trial court is not free to enter a directed verdict or judgment *n.o.v.* "if there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome." *Id.* at 454. The court may not reweigh the evidence and substitute its judgment for that of the jury because it feels a different result is more reasonable. *Id.* at 452-53. We review a trial court's decision on a motion for directed verdict or judgment *n.o.v. de novo. McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 132 (1999).

¶ 67 In contrast, when a party files a posttrial motion seeking a new trial, the trial court weighs the evidence and may set aside the verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence. *Maple*, 151 Ill. 2d at 454. "A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary, and not based upon any of the evidence." (Internal quotation marks omitted.) *Id.* The application of this standard is within the sound discretion of the trial court; "[a] court's ruling on a motion for a new trial will not be reversed except in those instances where it is affirmatively shown that it clearly abused its discretion." *Id.* at 455. The abuse-of-discretion standard applies because the trial judge had the benefit of observing the witnesses firsthand at the trial and credibility issues may have been relevant to the jury's verdict. *Id.* at 456. In

determining whether the trial court abused its discretion, we consider whether the jury's verdict was supported by the evidence and whether the losing party was denied a fair trial. *Id.* at 455.

¶ 68 Thus, our supreme court "has carefully preserved the distinction" in these evidentiary standards, and the failure to request the appropriate relief "is not a mere technical deficiency." *Hamilton v. Hastings*, 2014 IL App (4th) 131021, ¶¶ 31-32 (holding that the plaintiff was precluded from requesting that the appellate court enter judgment on liability where her posttrial motion requested only a new trial). Henley's motion for judgment *n.o.v.* does not implicate the evidentiary standard applicable to a motion for a new trial; moreover, the trial court was not given the opportunity to analyze Henley's motion in that context.

¶ 69 Where a party does not seek a new trial in her motion for judgment *n.o.v.*, assuming the evidence complained of is found to be relevant, the appellate court may not inquire as to the trial court's rulings on its admissibility. *Uebelein v. Chicago Transit Authority*, 86 Ill. App. 2d 395, 399 (1967) (citing *Gundich v. Emerson-Comstock Co.*, 21 Ill. 2d 117, 128 (1960)). Based on the foregoing, this court is precluded from ruling on Henley's appeal of the trial court's evidentiary rulings in this case because she failed to request the appropriate relief in her posttrial motion, that is, a new trial on the city's liability.

¶ 70 Henley next argues that the trial court's ruling and instructions to the jury that the city did not have actual notice of the dangerous condition posed by the tree planted near the stop sign and had no duty to inspect the stop sign on a regular basis was reversible

error. She asserts that the mayor's knowledge and the city's conduct in cutting the tree back so that the stop sign was visible provided actual notice to the city of a potentially dangerous condition, creating a duty on the part of the city to regularly inspect the stop sign to ensure that the sign remained visible.

¶ 71 In a negligence claim, the plaintiff alleges the defendant owed a duty of care to the plaintiff, the defendant breached that duty, and that breach was a proximate cause of the plaintiff's injuries. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010). The tort liability of municipalities is governed by the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-101 *et seq.* (West 2012)). Section 3-102(a) of the Act provides that a local public entity has the duty to maintain its property in a reasonably safe condition; however, it is not liable for any injury unless it has either actual or constructive notice of the condition that is not reasonably safe for a sufficient time prior to the injury to have taken corrective action. 745 ILCS 10/3-102(a) (West 2012); *Baker v. City of Granite City*, 75 Ill. App. 3d 157, 160 (1979). Sufficient notice is notice of a condition that happens to be unsafe, whether or not the public entity knows it. *Mark Twain Illinois Bank v. Clinton County*, 302 Ill. App. 3d 763, 769 (1999). It is the plaintiff's burden to provide facts showing that a defendant had actual or constructive notice of the allegedly unsafe condition in adequate time to remedy it. *Lewis v. Rutland Township*, 359 Ill. App. 3d 1076, 1080 (2005).

¶ 72 We first note that Henley appears to argue that the city negligently caused the dangerous condition, in which case no showing of actual or constructive notice is required; rather, the public entity's involvement in creating the condition is sufficient

notice. *Mark Twain Illinois Bank*, 302 Ill. App. 3d at 769. However, her complaint did not allege that the tree was trimmed negligently, and, as the trial court pointed out, trimming the tree was an act that made the intersection safer, quite the opposite of creating the dangerous condition. We disagree with Henley's assertion on these grounds.

¶ 73 In ruling on Schaaf's December 30, 2010, motion for summary judgment, the trial court found that the evidence Henley presented was insufficient to show actual notice of a dangerous condition, *i.e.*, actual notice to the city of an obstruction to the stop sign in the relevant time period before the accident, but she minimally met her burden of showing that a factual issue exists as to whether the city had constructive notice that the stop sign was obstructed. Later, at the April 22, 2014, pretrial hearing, the trial court determined that the fact that the city had previously trimmed the tree was not evidence that it had actual notice that the tree was obstructing motorists' views of the stop sign on or before July 22, 2006. We agree.

¶ 74 Evidence was presented that the city trimmed the tree for the last time approximately two years before Henley's accident. However, the mayor during the relevant time period, Billy McDaniel, was not told by the former mayor that the tree needed to be trimmed on a regular basis, and he never received any complaints from city employees or citizens about the stop sign's visibility during his tenure. Section 3-102(a) of the Act requires that the notice be given "in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition." 745 ILCS 10/3-102(a) (West 2012). Here, the city was not expressly informed of a potentially dangerous condition–the stop sign obscured by a tree–in the reasonable time period before Henley's

accident. Based on the facts presented to it, the trial court properly found that the city did not have actual notice of a defect. See *Zameer v. City of Chicago*, 2013 IL App (1st) 120198, ¶ 18 (although the city had complaints about nearby sidewalk defects, the city did not have actual notice of the specific defect where the record contained no evidence that anyone informed the city of the specific defect).

¶ 75 Henley argues that trimming the tree meant that the city was once aware of a dangerous condition and thus had a continuing duty to inspect the tree. She cites *Stackhouse v. Royce Realty & Management Corp.*, 2012 IL App (2d) 110602, for this proposition.

¶ 76 In *Stackhouse*, the plaintiff was injured after a tree located on a golf course's property fell and struck her. *Id.* ¶ 1. She sued the golf course and its manager, Royce Realty. *Id.* ¶ 2. The evidence showed that approximately two years before the accident, a tree of the same variety, which appeared to be rotten, fell in the same location; the plaintiff observed this at the time and reported it to Cesar Lopez, the golf course superintendent, who told her he would have someone check it out. *Id.* ¶ 4. Lopez testified that he did not remember this conversation and that, although the tree that fell in 2006 was removed, he did not attempt to determine why the tree had fallen. *Id.* ¶ 7. On appeal, Royce Realty argued that it had no duty to the plaintiff. *Id.* ¶ 17.

¶ 77 The appellate court found that Royce had a duty to inspect the tree because he had constructive knowledge, through Lopez, that the tree was possibly rotten and therefore posed the danger of falling. *Id.* ¶ 31. The court stated that "as an obligation on Royce to inspect that one tree and remove it if it was rotten was not an onerous burden, we hold

that Royce owed a duty to the plaintiff to inspect the tree and remove it if it was rotten." *Id*. The court noted that the passage of time did not extinguish Royce's initial duty to inspect the tree. *Id*. ¶ 32.

¶ 78 We find *Stackhouse* distinguishable from this case. The *Stackhouse* defendants had a duty to inspect a tree that was irreversibly rotten and in danger of falling from the time it was discovered; here, the trimmed tree represented a "problem solved" for some time thereafter. While a rotten tree may be considered in danger of falling at some point in the future in a similar fashion as its neighboring rotten tree, the trimmed tree was not necessarily in danger of regrowing in the exact manner that causes issues with motorists' visibility of the stop sign. We agree with the trial court that the fact that the city previously trimmed the tree is not evidence that it had actual notice that the tree was obstructing motorists' views of the stop sign on July 22, 2006. The mere existence of the tree was not a dangerous condition. The dangerous condition at issue was whether the tree blocked motorists' view of the stop sign–this is the condition Henley alleged was a proximate cause of her injuries. We find no support in the law for Henley's proposition that, by trimming the tree in the past, the city had a continuing duty to inspect the tree for potentially dangerous overgrowth.

¶ 79 As we find that the trial court's ruling on this issue was not erroneous, we disagree with Henley's assertion that "the Court incorrectly instructed the jury on the duty of the city omitting any obligation to inspect, and on notice requiring the jury to find constructive notice rather than ruling as a matter of law that the city had actual notice" and her assertion that, pursuant to the same reasoning, she should have been allowed to

amend her complaint to allege this argument. Thus, the trial court's subsequent decisions pertaining to this ruling were not erroneous.

¶ 80 Henley asserts that the facts of this case did not justify allowing Schaaf to argue that Sutton was the sole proximate cause of her injuries and that the trial court erred in instructing the jury on sole proximate cause. We disagree.

¶ 81 Generally, a trial court's decision to grant or deny a jury instruction is reviewed for an abuse of discretion; the standard for determining an abuse of discretion is whether, taken as a whole, the instructions are sufficiently clear so as not to mislead and whether they fairly and correctly state the law. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 505 (2002). When the question is whether the applicable law was conveyed accurately, however, the issue is a question of law, and our standard of review is *de novo*. *Studt v. Sherman Health Systems*, 2011 IL 108182, ¶ 13.

¶ 82 A litigant has the right to have the jury clearly and fairly instructed upon each theory that was supported by the evidence. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 100 (1995). The question of what issues have been raised by the evidence is within the trial court's discretion. *Id.* The evidence may be slight, and a reviewing court may not reweigh it or determine if it should lead to a particular conclusion. *Id.*

¶ 83 The jury was instructed on the long form of IPI No. 12.04, which reads:

> "More than one person may be to blame for causing an injury. If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame.

[However, if you decide that the sole proximate cause of injury to the plaintiff was the conduct of some person other than the defendant, then your verdict should be for the defendant.]" IPI Civil 3d No. 12.04.

¶ 84 The second paragraph should be used only where there is evidence tending to show that the sole proximate cause of the occurrence was the conduct of a third person. *Leonardi*, 168 Ill. 2d at 101 (citing IPI Civil 3d No. 12.04, Notes on Use). Henley asserts that, because Sutton's acts were foreseeable to the city, they cannot be the sole proximate cause of her injuries and therefore the trial court erred in tendering the second paragraph to the jury.

¶ 85 We first note that Henley's argument rests on the principle that the subsequent act of a third party does not break the causal connection between a defendant's negligence and a plaintiff's injury where that subsequent act was probable and foreseeable. *Salvi v. Montgomery Ward & Co.*, 140 Ill. App. 3d 896, 911 (1986). However, this argument assumes that the city's conduct was at least *a* proximate cause of Henley's injuries; here, the defendants have denied that the city was a proximate cause. Thus, Henley's reliance on this principle is misplaced. See *Leonardi*, 168 Ill. 2d at 93.

¶ 86 Our supreme court offers excellent guidance on the proper use of IPI No. 12.04. Where there is some competent evidence that the sole proximate cause of a plaintiff's injury lies in the conduct of someone other than the defendant, the defendant is entitled to have the jury instructed pursuant to the second paragraph of IPI No. 12.04 even without evidence tending to establish that the third person's conduct was negligent. *McDonnell v. McPartlin*, 192 Ill. 2d 505, 522 (2000). A defendant's general denial of liability is

sufficient to permit the defendant to raise the sole proximate cause defense and present evidence that the claimed injury was the result of another cause. *Leonardi*, 168 Ill. 2d at 93-94. The element of proximate cause remains an element of the plaintiff's case; the second paragraph of IPI No. 12.04 properly reflects the defendant's right to attempt to negate a single element of the plaintiff's negligence claim, *i.e.*, the element of proximate cause. *Id.*

¶ 87 At trial, evidence was presented that when entering the intersection, Sutton did not yield the right-of-way to Henley. Before colliding with Henley's vehicle, Sutton crossed three lanes of traffic without braking or attempting to brake, and she pled guilty to failure to yield. She admitted that she had been to Metropolis before and knew drivers on secondary roads were supposed to stop before entering the main thoroughfare. Furthermore, multiple witnesses testified that the stop sign was visible in the photographs Henley admitted into evidence.

¶ 88 Taken together, we find that this is at least some competent evidence that a third person–Sutton–was the sole proximate cause of Henley's injuries; as such, Schaaf was entitled to have the jury instructed pursuant to the second paragraph of IPI No. 12.04. The trial court did not err in this matter.

¶ 89 Next, Henley asserts that there was no basis for the trial court to find her guilty of contempt of court and impose sanctions on her.[3] Henley was sanctioned for failing to

[3]The record does not reflect that Henley was held in contempt.

supplement her discovery responses to disclose the personal injury lawsuit she filed in Kentucky arising from her Kentucky accident.

¶ 90 In her brief, Henley states that "admittedly, [she] should have supplemented her answer to Defendant's interrogatory inquiring about other lawsuits," but "it is clear, however, that there was no prejudice to Defendants by discovery that suit had been filed over an occurrence that they knew everything that was to be known due to the depositions and production of [Henley's] Kentucky lawyer's file and the insurance carriers' files prior to the suit being filed."

¶ 91 As Henley admits to violating her duty to supplement her responses pursuant to Illinois Supreme Court Rules 213 and 214,[4] we will address only whether the trial court erred in determining that the discovery infractions warranted the sanctions imposed.

¶ 92 A court has express authority under Illinois Supreme Court Rule 219(c) to impose a variety of sanctions for a party's failure to comply with discovery rules or orders. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). The decision to impose a particular sanction under Rule

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[4]Illinois Supreme Court Rule 213(i) states that "[a] party has a duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party." Ill. S. Ct. R. 213(i) (eff. Jan. 1, 2007). Illinois Supreme Court Rule 214 states that "[a] party has a duty to seasonably supplement any prior response to the extent of documents, objects or tangible things which subsequently come into that party's possession or control or become known to that party." Ill. S. Ct. R. 214 (eff. Jan. 1, 1996).

219(c) is within the trial court's discretion and thus, only a clear abuse of discretion justifies reversal. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998).

¶ 93 The factors a trial court is to use in determining what sanction, if any, to apply are: (1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering the testimony or evidence. *Id.* at 128-29. When imposing sanctions, the trial court's goal is to coerce compliance with discovery rules and orders, not to punish the dilatory party. *Id*. at 123. However, where it becomes apparent that a party has willfully disregarded the court's authority, and such disregard is likely to continue, that party's interest in the lawsuit must bow to the interests of the opposing party. *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 69 (1995).

¶ 94 The trial court considered the factors expounded in *Shimanovsky* and found that sanctions were warranted. Henley asserts that Schaaf should not have been surprised when the existence and contents of the Kentucky pleading were uncovered pursuant to Schaaf's independent investigation; however, in her deposition testimony, Henley had denied hiring a lawyer for the accident and testified that she was not sure if she was going to file a claim. Despite Henley's claim that "defendants' 'investigation' efforts were nothing more than standard tasks that are performed by any competent attorney," it is reasonable to conclude that Schaaf was surprised by the discovery of the Kentucky lawsuit.

¶ 95 Henley also asserts that Schaaf was not prejudiced by her failure to supplement her discovery responses. However, as previously noted, following Henley's direct examination at trial, Schaaf had the right to cross-examine her regarding the Kentucky accident. A defendant's right of cross-examination includes the right to rely upon the plaintiff's disclosures in preparing for cross-examination. *White v. Garlock Sealing Technologies, LLC*, 373 Ill. App. 3d 309, 325-26 (2007). Henley's allegations in her Kentucky lawsuit were part of Schaaf's cross-examination of her regarding the extent of her claimed injuries. As such, we agree with the trial court that Henley's claims that the existence and contents of the Kentucky complaint were irrelevant to this cause of action are "disingenuous, at best." Furthermore, Henley's failure to disclose information regarding the Kentucky accident did not stand in isolation; there was no indication of good faith on her part. The trial court's decision to sanction her was not an abuse of discretion.

¶ 96 Henley next asserts that the trial court allowed items on the defendants' bill of costs that were not allowable. She asserts that Schaaf was not entitled to the witness fees, mileage fees, and service of subpoena fees that were paid to present witnesses at the first two trials, as well as the trial that was to begin on July 15, 2014, but was stayed due to her petition for supervisory order filed with the Illinois Supreme Court.

¶ 97 Section 5-109 of the Code provides that if judgment is entered against the plaintiff, "then judgment shall be entered in favor of defendant to recover defendant's costs against the plaintiff." 735 ILCS 5/5-109 (West 2012). The term "costs" is not defined in the statute, but the supreme court has held that section 5-108 of the Code (735 ILCS 5/5-108

(West 2012)), which applies to prevailing plaintiffs, mandates that the costs taxed to the losing party are commonly understood to be "court costs" such as filing fees, subpoena fees, and statutory witness fees. *Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill. 2d 295, 302 (2003). It is not unreasonable to conclude that the same standard applies to prevailing defendants pursuant to section 5-109. See *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App. 3d 471, 486 (2005).

¶ 98 Supreme Court Rule 208(d) provides that certain expenses related to depositions may be taxed as costs. Ill. S. Ct. R. 208(d) (eff. Nov. 1, 2011). Rule 208(a) provides that "the party at whose instance the deposition is taken shall pay the fees of the witness and of the officer and the charges of the recorder or stenographer for attending," while Rule 208(b) provides that "[e]very witness attending before the officer is entitled to the fees and mileage allowance provided by statute for witnesses attending courts in this State." Ill. S. Ct. R. 208(a), (b) (eff. Nov. 1, 2011).

¶ 99 The test for when the expense of a deposition is taxable as costs is "its necessary use at trial." *Galowich v. Beech Aircraft Corp.*, 92 Ill. 2d 157, 167 (1982). The taxing of allowable costs is an area in which the trial court exercises its discretion, to which we will defer unless that discretion is abused. *Burmac,* 356 Ill. App. 3d at 485.

¶ 100 Although Illinois courts have not addressed whether a prevailing party can recover its costs from prior mistrials, there is no language in the applicable statute or Illinois Supreme Court rule authorizing costs that prevents the trial court from awarding the costs of the prior mistrials to the prevailing party. Furthermore, the Illinois Supreme Court has observed that the purpose of awarding costs to the prevailing party is to reimburse the

prevailing party, to at least some extent, for the expenses necessarily incurred in the assertion of his rights in court. *Galowich*, 92 Ill. 2d at 165-66. The occurrence of two mistrials and preparation for a trial that was stayed due to Henley's conduct do not change Schaaf's status as a party entitled to costs of suit, or the nature of the witness fees and mileage charges. As such, we find that the trial court's decision to award the objected-to costs is consistent with the purposes of relevant statutes and supreme court rules and was not an abuse of discretion.

¶ 101 Henley asserts that the trial court erred by awarding $91.05 for transcription of the April 25, 2014, evidence deposition of Deneal Bullock, the administrative assistant to the mayor of the city at the time of the incident. The deposition was taken because the witness was to have dental surgery and therefore would not have been able to testify at the second trial.

¶ 102 The parties stipulated to use the evidence deposition for the convenience of the witness. Thus, Henley cannot now object to taxing the costs of the evidence deposition. See *Charter Bank & Trust of Illinois v. Edward Hines Lumber Co.*, 233 Ill. App. 3d 574, 580 (1992) (generally, a party cannot dispute matters on appeal to which she stipulated).

¶ 103 Further, Illinois Supreme Court Rule 212(b) provides that evidence depositions may be used at trial "for any purpose" if the "deponent is out of the county." Ill. S. Ct. R. 212(b)(2) (eff. Jan. 1, 2011). The first two trials of this matter were held in Massac County, Bullock's home county. The third trial was held in Williamson County and would have required Bullock to travel to testify. This could properly be deemed a

"necessary use at trial." See *Galowich*, 92 Ill. 2d at 167. The trial court did not abuse its discretion in awarding the cost.

¶ 104 Henley also argues that the trial court erred in awarding the transcription costs of Clyde Wills' evidence deposition. Wills had plans to be out of the country during Schaaf's case in chief, and Henley did not object to the use of Wills' evidence deposition at trial. Again, pursuant to Rule 212(b), the trial court's order was not an abuse of discretion. Ill. S. Ct. R. 212(b)(2) (eff. Jan. 1, 2011) (evidence depositions may be used at trial "for any purpose" if the "deponent is out of the county"). We find that the trial court did not abuse its discretion in awarding the cost.

¶ 105 Finally, Henley requests that, if this court reverses the verdict and remands the cause for a new trial, the case be assigned to a different judge outside of the First Judicial Circuit. However, as we are affirming the circuit court's decisions in this case, we decline to address Henley's request.

¶ 106 In Henley's appeal, the circuit court's decisions are affirmed.

¶ 107 II. RIPPLINGER'S APPEAL

¶ 108 We turn now to the separate appeal brought by George Ripplinger, Henley's attorney. Ripplinger appeals the trial court's January 10, 2014, order finding him in contempt and granting Schaaf's motion for sanctions for failing to disclose Henley's Kentucky accident, which occurred approximately one week before the first trial. He also appeals the court's May 5, 2014, finding of direct criminal contempt for deliberate violation of *in limine* orders.

¶ 109 Five months after the first trial in this case, Schaaf learned of Henley's Kentucky accident. On April 2, 2013, Judge Leberman determined that Henley's disclosure of that accident was untimely, and granted Schaaf leave to pursue discovery to determine the relevance of Henley's injuries and medical treatment.

¶ 110 Dr. Arendall's discovery deposition was taken on July 17, 2013.[5] Dr. Arendall testified that, at Henley's office visit on August 16, 2012, three days after the Kentucky accident, she complained of increased neck and low back pain. Dr. Arendall believed that the increased pain she was experiencing was caused by the Kentucky accident. Dr. Arendall recommended a diagnostic study and a CT myelogram. He prescribed Henley Valium for her muscle spasms and a course of steroids to relieve her symptoms, which he expected to continue for at least the next 10 days. Radiology studies were performed on October 17, 2012, and Dr. Arendall agreed that there were findings by the radiologist in October, after the Kentucky accident, that were not present before the accident. Dr. Arendall thought that after the Kentucky accident, Henley was overall "about the same clinically," and that the possibility of surgery was always in her future if necessary, but he agreed that surgery was not discussed as an option until after the Kentucky accident. Dr. Arendall confirmed that, during a March 2013 office visit, Henley told him that her

[5]Dr. Arendall also had an evidence deposition taken on October 16, 2013. However, this deposition was never filed for Judge Leberman's consideration before the hearing, and no request to supplement the record was made prior to the issuance of the sanctions order.

neck was feeling better but that she was still experiencing the same back symptoms that she was experiencing at her August 16, 2012, appointment. Dr. Arendall confirmed that he had previously opined that Henley is permanently and totally disabled, and his opinion on that matter has not changed.

¶ 111 After receiving this evidence, the trial court heard argument on December 3, 2013. On January 14, 2014, the court granted Schaaf's motion for sanctions. The court reviewed Dr. Arendall's deposition transcript, noting that the injuries in the two collisions were to the same parts of Henley's body, *i.e.*, her neck and back, and that Dr. Arendall attributed the increase in pain to the Kentucky accident. The court found that:

> "Additionally, for the approximately twelve months prior to the [Kentucky] collision, Plaintiff's lumbar spine studies were basically unchanged. However, on the first studies taken after the [Kentucky] accident, there were findings present that were not present before the [Kentucky] collision. Dr. Arendall attributed these new findings to the [Kentucky] collision. Dr. Arendall expected those new findings to produce an increase in symptomatology. Dr. Arendall began discussing the possibility of surgery to Plaintiff shortly after the [Kentucky] collision. Although additional surgeries were always a possibility for Plaintiff in the future, discussions between Dr. Arendall and the Plaintiff were hastened as a direct result of the [Kentucky] collision.
>
> Based on the deposition testimony, the injuries received by Plaintiff in the [Kentucky] collision are relevant to the issue of damages sought in the case currently before the court."

The court also noted that Ripplinger admitted at the hearing that the Kentucky accident was a "temporary exacerbation of [Henley's] symptoms," and that this knowledge should have been sufficient to put him on notice that disclosure of the accident was required.

¶ 112 The court held that Ripplinger had a duty as an officer of the court to investigate the facts and circumstances of the Kentucky accident, and noted that "[f]or [Henley]'s counsel to unilaterally and secretly make a determination that the injures [she] received in August of 2012 were ***not*** relevant was a willful and contumacious act ignoring the duty to timely supplement discovery answers and, further, calculated to deny defendants of a fair trial in this matter." (Emphasis in original.) The court found Ripplinger's conduct to be "one of the most egregious and contumacious acts witnessed by this court in twenty-five years of being a member of the bar." The court also mentioned Ripplinger's repeated violation of court rulings, especially during trial, which were addressed on the record during the pendency of the case.

¶ 113 The court ordered Ripplinger to pay the reasonable expenses and attorney fees incurred by Schaaf for the trial held August 20 through 30, 2012, and the mediation held December 17, 2012, as well as the expenses incurred in the preparation and prosecution of the motion for sanctions. The court further ordered, as a sanction, the denial of Henley's motion to present witnesses at trial and to reopen discovery on a limited basis. The court determined that the sanctions order would not be final "until the court determines the amount of the financial sanctions to be imposed."

¶ 114 Judge Leberman recused himself on March 20, 2014. Schaaf's motion for clarification, filed on April 3, 2014, was her first request to present evidence of the

Kentucky accident at trial. Judge Clarke granted this motion in his April 16, 2014, order resolving pending pretrial motions.

¶ 115 In this separate appeal, Ripplinger first asserts that "without any warning or indication whatsoever," the trial court's order of January 10, 2014, found him in indirect criminal contempt and must be reversed for failure to follow the procedural requirements for a contempt hearing. We disagree with Ripplinger's interpretation of this order. While the trial court indeed stated that Ripplinger's conduct was "one of the most egregious and contumacious acts witnessed by this court in twenty-five years of being a member of the bar," use of the word "contumacious" does not transform an award of sanctions into a contempt conviction.

¶ 116 Judge Leberman did not hold Ripplinger in contempt of court; in fact, the record reflects that the trial court considered filing a contempt petition in November 2012, as mentioned at the November 9, 2012, hearing. Ultimately, no such petition was filed. The sanctions imposed on Henley in the January 10, 2014, order referred only to Supreme Court Rule 213(i) and that the court "carefully considered each of the requested sanctions." This order was a sanction for discovery violations, which the trial court had the authority to enter pursuant to Illinois Supreme Court Rule 219 (eff. July 1, 2002), and was not a finding of indirect criminal contempt against Ripplinger. See, *e.g.*, *Lewis v. Family Planning Management, Inc.*, 306 Ill. App. 3d 918, 922-23 (1999) (granting the plaintiff's motion and imposing sanctions on deponents who fail to comply with the order did not make the order implicitly a contempt finding; the trial court did not use the term "contempt" in its discussion and did not find the deponent in contempt of court). As

such, we conclude that Ripplinger was not denied procedural due process because he was not found in contempt in the January 10, 2014, order.

¶ 117 Ripplinger next asserts that the January 14, 2014, order granting sanctions was contrary to the manifest weight of the evidence, arguing that the trial court's summary of Dr. Arendall's conclusions regarding Henley's injuries after the Kentucky accident were "misstatements of the record" and that the trial court's conclusion that Henley's injuries from the Kentucky accident were relevant to the issue of damages in this case was "erroneous."

¶ 118 A court has express authority under Illinois Supreme Court Rule 219(c) to impose a variety of sanctions for a party's failure to comply with discovery rules or orders. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). Rule 219(c) specifically allows for the imposition of attorney fees and monetary sanctions; additionally, a trial court is allowed to sanction a party for failure to comply with court orders pursuant to its inherent authority to control its docket. *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 66-67 (1995); *Yow v. Jack Cooper Transport Co.*, 2015 IL App (5th) 140006, ¶ 35. Reversal of a trial court's decision to impose a particular sanction is only justified when the record establishes a clear abuse of discretion. *Sander*, 166 Ill. 2d at 67.

¶ 119 The trial court found that the injuries Henley received in the Kentucky accident were relevant to the issue of damages in this case, and as such, Ripplinger's failure to disclose this information to opposing counsel was a sanctionable discovery violation. This determination was not contrary to the evidence, and the resulting sanctions order was not an abuse of discretion.

¶ 120 Dr. Arendall's July 17, 2013, testimony clearly supported the trial court's determination of relevance. At Henley's August 16, 2012, office visit, three days after the Kentucky accident, she complained of increased neck and low back pain. Dr. Arendall attributed that increased pain to the Kentucky accident. He prescribed her medication for that pain and expected that increased pain to continue for at least the next 10 days. In other words, he expected her to be in increased pain throughout the trial, a trial in which she (1) was seeking damages for injuries to the same parts of her body and (2) would be seen by the jury in obvious discomfort and be asked to testify as to her current levels of pain. Her injuries from the Kentucky accident were clearly relevant to the issue of damages in this case. The record does not establish a clear abuse of discretion in this instance.

¶ 121 Finally, Ripplinger asserts that the May 5, 2014, order of adjudication of direct criminal contempt was not supported by sufficient evidence of willful and deliberate violation of court orders. The following facts are relevant to this issue.

¶ 122 Before the first trial, Judge Leberman prohibited Henley from offering evidence or arguing that (1) the city created a dangerous condition by virtue of any previous tree trimming; (2) the city had actual notice of any dangerous or unsafe condition by virtue of any previous tree trimming; and (3) the city was on notice of a dangerous condition merely because the tree existed at a particular location. The court also prohibited testimony or evidence that the intersection was dangerous or hazardous based on other accidents that occurred at the location and testimony concerning "near misses," "close calls," and "driver confusion," absent evidence that an obstruction of the stop sign was

involved in causing the other accident. Also excluded were opinions from lay witnesses that the intersection was "dangerous." Evidence of prior and subsequent accidents at the intersection was allowed, subject to having a substantial degree of similarity with the accident in this case.

¶ 123 During the first trial, in response to Ripplinger's question about whether anything about the intersection was interesting in 2006, Sandra Farmer testified that "[t]here were several accidents that would happen at that intersection." When the defense objected, Ripplinger told the court at sidebar that "that's the answer I was looking for." Judge Leberman ruled that he was limited to the accidents that involved blockage of the stop sign, and "[t]hat was not limiting her answer." Judge Leberman also sustained an objection to Ripplinger's question, "Has there ever been a problem with the stop sign?" Judge Leberman also ordered stricken and the jury to disregard Farmer's statement that "there were several accidents that had happened because the tree had overgrown for quite awhile." Farmer admitted that she had no personal knowledge whether any other accidents were caused by the presence of the tree in front of the stop sign. Ripplinger then asked Farmer, "were there collisions often on that corner?" Judge Leberman sustained Schaaf's objection to this question.

¶ 124 Emily Farmer testified that she could not say whether the tree affected the visibility of the stop sign for northbound drivers, as July 2006 was a long time ago. Ripplinger asked if she had ever had a "close call" at that intersection. The court had counsel approach and reminded Ripplinger that unless the accident was similar, he was restricted from asking that question.

¶ 125 Emily's answers following this exchange did not connect the "close call" to the presence of the tree, and, in chambers, Ripplinger expressed his antipathy for the court's *in limine* orders. Ripplinger argued that, although he did not have direct evidence, he had "a carnival of people going through the stop sign with great regularity who are braking hard through the stop sign." He stated: "I think I can introduce, through circumstantial evidence, the problem, which is *** [t]here is a tree in front of that stop sign." The court stated that it understood Ripplinger's position but that "[i]t is not allowable circumstantial evidence just to say the sheer number of accidents must be because of the tree." Ripplinger insisted that Emily Farmer attributed her "close call" to the tree. The court then stated:

> "Neither [of his two witnesses] have said that any of the accidents were in any way related to the tree blocking the sign. And so the jury is hearing about the accidents, which is what you want, I understand. But by doing what you want, you are violating the Court's order."

¶ 126 On August 23, 2012, Clyde Wills was asked if there were frequent collisions at that corner, and the defense objection was sustained. Wills was asked if there were collisions attributable to the tree. An offer of proof outside the presence of the jury was then conducted. The offer of proof established that Wills had no personal knowledge of any such collisions.

¶ 127 Sharon LaGore, Henley's best friend, testified that "[she] knew it was a dangerous intersection." Schaaf's objection was overruled subject to cross-examination, and another sidebar was held. After some discussion and then another attempt at questioning, the

court asked LaGore if she had any personal knowledge of any condition at that intersection, to which she replied, "I knew the tree was there." After yet another discussion in chambers, in which the court felt it erred in allowing LaGore's testimony, the jury was instructed to disregard her testimony that the intersection was dangerous.

¶ 128 On August 24, 2012, Ripplinger asked Officer Corry if the police report concerning this accident was utilized in preparing reports about dangerous intersections, streets, and highways. The court ruled this inadmissible because it implied that the intersection was dangerous.

¶ 129 Later that day, Judge Leberman delivered prepared comments for the record outside the presence of the jury, finding Ripplinger's actions in ignoring and violating the court's orders limiting evidence to be intentional and contumacious. The court noted that it was Ripplinger's duty to inform the witnesses that they were not to testify regarding the limited evidence, and by his own admission, he had not done that. The intentional violations forced the defense to continuously object, placing them in a negative light before the jury. To control the submission of inadmissible evidence, the court required the submission of an offer of proof before presenting testimony from Henley's witnesses. Due to fairness concerns, the court was also willing to consider curative suggestions from the defendants.

¶ 130 As previously mentioned, one week after declaring the first mistrial on August 30, 2012, Judge Leberman informed Henley's counsel that the court was considering filing a petition for contempt based on Ripplinger's violations of the court's *in limine* orders.

¶ 131 Following Judge Leberman's recusal, Judge Clarke held a case management conference on April 4, 2014, emphasizing his intention to provide a timely resolution of this case. On April 16, 2014, Judge Clarke entered two orders *in limine* based on his review of the transcript for the first trial−an order on the admissibility of lay opinion testimony and an order on the admissibility of hearsay testimony. Noting in both orders that "[d]uring the first jury trial, confusion and delay occurred on several occasions in open court and in the presence of the jury" when improper lay opinion and hearsay testimony was given, and a great potential for prejudice resulted. Judge Clarke clearly ruled that opinions that the intersection was dangerous were inadmissible, absent a foundation based on personal knowledge at a relevant point in time based on obstruction of the stop sign by the tree in question. With respect to hearsay, Judge Clarke provided specific examples of testimony from the first trial and identified why the testimony would be inadmissible. Judge Clarke specifically ruled that questions to witnesses about Steve Farmer's statements–"that tree has caused another crash" and an alleged complaint to the city about the tree–were inadmissible hearsay. Both orders stated that violations would be punishable as contempt.

¶ 132 During the second trial, on May 1, 2014, Sharon LaGore again volunteered inadmissible testimony, resulting in sustained defense objections and a jury admonition. Later that day, Ripplinger asked Sandra Farmer whether the tree blocking the stop sign "had been an issue in the neighborhood before this incident?" The defense objection was sustained. Ripplinger followed up by asking, "Had you or anyone in your family ever notified the City that there was a problem at that sign?" and "Had the problem with the

tree blocking the view of the stop sign been a problem before this time?" The defense objected, and a discussion outside the presence of the jury resulted in the court admonishing the jury to disregard the questions and answers elicited.

¶ 133 The next morning, on May 2, 2014, outside the presence of the jury, Judge Clarke found that Ripplinger intentionally and knowingly violated direct orders of the court in rapid succession. Judge Clarke told Ripplinger that "[y]ou are hurting your client by your conduct in this case." Judge Clarke's written order adjudicating Ripplinger in direct criminal contempt was signed the same day.

¶ 134 The Illinois Supreme Court has defined criminal contempt of court "as conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute." (Internal quotation marks omitted.) *People v. Simac*, 161 Ill. 2d 297, 305 (1994). A finding of criminal contempt is punitive in nature and is intended to vindicate the dignity and authority of the court. *Id*. at 305-06.

¶ 135 Direct criminal contempt may be found and punished summarily because all elements are before the court and, therefore, come within its own immediate knowledge. *Id*. On appeal, the standard of review for direct criminal contempt is whether there is sufficient evidence to support the finding of contempt and whether the judge considered facts outside of the judge's personal knowledge. *Id.*

¶ 136 In his argument, Ripplinger compares Judge Leberman's evidentiary rulings from the first trial to Judge Clarke's rulings in the second. He asserts that he reasonably understood that the questions he asked Sandra Farmer allowed in the first trial would not

violate the *in limine* orders entered prior to the second trial, and thus there was insufficient evidence to find him in direct criminal contempt. We disagree.

¶ 137 Ripplinger's argument ignores the fact that, in an attempt to structure an orderly proceeding, Judge Clarke provided detailed written evidentiary rulings in advance of the second trial, providing clear limitations and examples of inadmissible testimony. Ripplinger was warned that violating these direct orders would be punishable as contempt. Yet, despite what appears to be an exhausting amount of time outside the presence of the jury going over these rulings, in the span of one breath, Ripplinger violated both orders in an attempt to get inadmissible evidence in front of the jury. He blatantly and repeatedly ignored the evidentiary limits imposed on the parties and thereby flouted the authority of the court; thus, the court's decision to hold him in contempt was both understandable and appropriate. There is sufficient evidence to support the finding of contempt in this instance.

¶ 138 In Ripplinger's separate appeal, the circuit court's decisions are affirmed.

¶ 139 III. SCHAAF'S CROSS-APPEAL

¶ 140 We turn to Schaaf's cross-appeal, which was brought in response to Judge Clarke's decision to not impose sanctions pursuant to Judge Leberman's January 14, 2014, order.

¶ 141 Judge Leberman awarded attorney fees and expenses and denied Henley's motion to reopen discovery and present additional witnesses. The order provided that "[t]his order for sanctions shall not be final until the court determines the amount of the financial sanctions to be imposed." Ultimately, Schaaf submitted supporting documentation in the amount of $64,394.82, the reasonableness of which was not contested. Shortly after this

submission, Judge Leberman recused himself from the case, and Judge Clarke took over this matter on April 29, 2014.

¶ 142 On March 27, 2015, after the conclusion of the second trial, Schaaf renewed her motion for an award of sanctions under Judge Leberman's order. On April 10, 2015, Henley responded by moving for reconsideration of Judge Leberman's sanctions order.

¶ 143 On May 26, 2015, the trial court entered an order revisiting the question of sanctions. The court reviewed Ripplinger's conduct in the first trial and stated the following:

> "[Ripplinger] intentionally perpetrated a fraud upon this court when he enjoyed the advantage of viewing all of the Defense case, while placing Plaintiff in front of the jury, exhibiting her obvious discomfort, and asking her questions, eliciting responses describing her pain, which, without a doubt, had been exacerbated by the second accident, which he had failed to disclose to court and counsel, thus manipulating and misleading the jury in a blatant attempt to appeal to their sympathy.
>
> * * *
>
> Instead [of making a timely disclosure of the accident and delaying the trial for a sufficient time for Schaaf to investigate], Plaintiff's counsel remained silent and allowed the trial to proceed as scheduled, planting error after error into the record with questions, statements and arguments made in violation of Judge Leberman's rulings, effectively enjoying a risk free trial.

> Thereafter, [Ripplinger] repeatedly argued that the case should proceed as if the first trial had never occurred [*sic*]
>
> Judge Leberman was well within his discretion in crafting his judicial response, designed not to reward such blatant gamesmanship, but rather to ensure that the next trial would proceed with the benefit of both discovery and a trial on the merits and to impress upon [Ripplinger] the importance of improving his compliance with Supreme Court Rules and court orders [*sic*]
>
> This Court continues to find, independent of the findings of Judge Leberman, that the sanctions imposed for the misconduct of [Ripplinger] before and during the first trial, were justified, pursuant to Rule 219."

The court also found that the amount submitted by the defense constituted a reasonable amount to award as a sanction and that "each and every [sanction]" was necessary to ensure both discovery and a trial on the merits. However, the court went on to reason that the goal of "[a] trial on the merits with the benefit of full discovery" had been achieved. The court then stated:

> "The sanctions ordered, and the threat of additional, escalating sanctions to be imposed in the event of further misconduct, were necessary, and have been proven adequate, to achieve the required goal.
>
> This Court is now faced with the question of what purposes would be served by actually entering the order awarding attorney fees and costs.
>
> Certainly the Defense would receive the fees and expenses they should not have had to incur, and plaintiff's counsel would be punished. There is equity in

> achieving those purposes. On balance, however, *** this Court now finds that the entry of such an order awarding attorney fees and costs is no longer necessary, in light of the adequacy of previously imposed and threatened sanctions in achieving the goal of a trial on the merits with the benefit of full discovery."

The court denied Schaaf's motion to award sanctions pursuant to the January 10, 2014, order.

¶ 144 Schaaf's posttrial motion sought reconsideration of the order revisiting the question of sanctions. On September 11, 2015, the court denied the motion. Schaaf appeals, asserting that the order revisiting the question of sanctions should be reversed with directions to enter judgment against Ripplinger in the amount of at least $62,394.82, and remanded for the consideration of additional sanctions as a penalty for willful misconduct.

¶ 145 A trial court is allowed to sanction a party for failure to comply with court orders pursuant to its inherent authority to control its docket. *Sander*, 166 Ill. 2d at 66-67; *Yow*, 2015 IL App (5th) 140006, ¶ 35. In determining an appropriate sanction, the trial judge must weigh the competing interests of the parties' rights to maintain a lawsuit against the necessity to accomplish the objectives of discovery and promote the unimpeded flow of litigation; the purpose of imposing sanctions is to coerce compliance with court rules and orders, not to punish the dilatory party. *Sander*, 166 Ill. 2d at 68. A just order of sanctions under Rule 219(c) is one that, to the degree possible, ensures both discovery and a trial on the merits. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 123

(1998). Reversal of a trial court's decision to impose a particular sanction is justified only when the record establishes a clear abuse of discretion. *Sander*, 166 Ill. 2d at 67.

¶ 146 The January 14, 2014, order specifically stated that the order "shall not be final until the court determines the amount of the financial sanctions to be imposed." Just as Judge Leberman had broad discretion in his decision to sanction Ripplinger in the amount of Schaaf's attorney fees, so, too, did Judge Clarke have the discretion to determine that no monetary sanction was necessary in light of a satisfactory resolution to the case, and that such a sanction would ultimately be only punitive in nature. Although this court may not have reached the same conclusion, it is axiomatic that a trial court abuses its discretion only when its decision is "arbitrary, fanciful or unreasonable [citation] or where no reasonable person would agree with the position adopted by the trial court." (Internal quotation marks omitted.) *Kubicheck v. Traina*, 2013 IL App (3d) 110157, ¶ 30. As such, we cannot say that the trial court abused its discretion.

¶ 147 Schaaf's cross-appeal is affirmed.

¶ 148 For the foregoing reasons we affirm the following: the May 21, 2015, judgment entered on the jury verdict; the September 11, 2015, denial of Henley's posttrial motion and order assessing and awarding costs to the defendants; the February 19, 2015, order imposing sanctions; the March 6, 2015, order awarding sanctions against her; the trial court's January 10, 2014, order finding Ripplinger in contempt and granting Schaaf's motion for sanctions; the court's May 5, 2014, finding of direct criminal contempt for Ripplinger's deliberate violation of *in limine* orders; and, the court's September 11, 2015,

denial of Schaaf's posttrial motion seeking reconsideration of the order revisiting the question of sanctions.

¶ 149 Affirmed.