

NOTICE  
Decision filed 10/23/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160301-U

NO. 5-16-0301

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

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ROCKFORD MUTUAL INSURANCE COMPANY,	)	Appeal from the
an Illinois Corporation, as Subrogee of MALINDA	)	Circuit Court of
WAIER, an Individual, KENNETH WAIER, an	)	Jefferson County.
Individual, and DARLENE WAIER, an Individual,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15-SC-776
	)	
FALYN S. EDWARDS, an Individual,	)	Honorable
	)	Michael J. Molt,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Justices Goldenhersh and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The plaintiff presented adequate evidence to meet its burden to show that the defendant’s negligent operation of her vehicle more probably than not caused damage to the vehicle owned by the plaintiff’s insured, and the judgment of the trial court, awarding the costs of repairs to the plaintiff, was not against the manifest weight of the evidence.

¶ 2 The plaintiff, Rockford Mutual Insurance Company (Rockford Mutual), as subrogee of its insureds, Malinda Waier, Kenneth Waier, and Darlene Waier, filed an action against the defendant, Falyn S. Edwards, to recover the cost of repairs to its insureds’ vehicle. Following a bench trial, the court entered a judgment in favor of

Rockford Mutual, and awarded \$7,989.80 in damages, plus court costs. On appeal, the defendant contends that the judgment is against the manifest weight of the evidence where Rockford Mutual failed to present any evidence of a causal connection between the damage to its insureds' vehicle and the defendant's negligence. For reasons that follow, we affirm.

¶ 3 This action arises from an automobile collision involving the defendant and persons insured by Rockford Mutual. On September 15, 2011, Malinda Waier was driving her family's sport utility vehicle, approaching an intersection controlled by an electric traffic light. Darlene Waier was a passenger in the Waier vehicle. The electric signal turned red, and Malinda guided the vehicle to a stop. While stopped, the Waier vehicle was hit from behind by a vehicle driven by the defendant. At the time of the collision, the Waier vehicle was insured under an automobile insurance policy issued by Rockford Mutual.

¶ 4 On December 28, 2015, Rockford Mutual, as subrogee of its insureds, filed an action against the defendant, Falyn Edwards, in the small claims division of the circuit court of Jefferson County to recover the cost of repairs to the Waier vehicle. In the complaint, Rockford Mutual alleged that on September 15, 2011, the defendant operated her vehicle in a negligent manner, and that as a direct and proximate result of the defendant's negligence, the defendant's vehicle caused significant damage to the Waier vehicle. Rockford Mutual further alleged that it was obligated to pay for repairs to the Waier vehicle upon proof of a loss, and that it paid to its insureds and the auto repair facility, the sum of \$7,989.80 for vehicle repairs resulting from the September 15, 2011,

incident. Rockford Mutual asserted that it subsequently made a demand on the defendant for reimbursement of that sum, and that the defendant refused to pay. A copy of the Illinois Motorist Report was attached to the complaint, and identified as exhibit A. Copies of the repair summary for the Waier vehicle and the record of the payment drafts for the repairs were attached to the complaint, and identified as exhibit B.

¶ 5 The defendant filed an answer to the complaint. In the answer, the defendant admitted that she was driving her vehicle on the date of the incident, but denied that she was negligent in any of the ways claimed in the complaint. She also denied that the Waier vehicle was significantly damaged as a result of her alleged negligence. As part of her answer, the defendant admitted that a copy of the Illinois Motorist Report was attached to the complaint. She also admitted to the authenticity and relevance of the documents comprising exhibit B.

¶ 6 A bench trial was held on May 18, 2016, but there is no transcript of the proceedings. The defendant prepared and filed a proposed bystander's report pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The bystander's report was approved by the trial court, and subsequently filed as a supplement to the record on appeal. According to the bystander's report, the defendant did not personally appear for the trial, but an attorney appeared on her behalf. The bystander's report also indicated that two witnesses, Darlene Waier and an unnamed Rockford Mutual claims adjuster, testified during the proceedings.

¶ 7 According to the account in the bystander's report, Darlene Waier testified that while she was at a complete stop, the defendant's vehicle collided with the rear of her

vehicle. Waier further testified that the defendant admitted to driving the vehicle that collided with her vehicle. Waier also stated that she took her vehicle to a repair shop after the accident and that her vehicle was repaired.

¶ 8 According to the bystander's report, the claims adjuster testified that Rockford Mutual insured the Waier vehicle on the date of the collision. The claims adjuster also testified that when the invoice for repairs to the Waier vehicle was presented, Rockford Mutual paid the invoice in the amount \$7,989.80.

¶ 9 At the close of the evidence, the trial court entered a judgment in favor of Rockford Mutual, and awarded \$7,989.80 in damages, and \$187 in court costs. The defendant appealed.

¶ 10 On appeal, the defendant contends that the trial court's judgment is against the manifest weight of the evidence because Rockford Mutual presented no evidence to establish a causal connection between the defendant's negligence and the damage to the Waier vehicle. The defendant claims that the plaintiff's evidence only showed that there was a collision, that the Waier vehicle was taken to a repair shop after the collision, and that repairs were made to the Waier vehicle. The defendant argues that there was no evidence regarding the condition of the Waier vehicle prior to the collision, no evidence regarding the damage that was done to the vehicle as a result of the collision, and no evidence connecting the collision and the repairs made to the vehicle. The defendant also argues that the evidence of the paid repair bill is not sufficient to establish the necessary element of causation in this case.

¶ 11 In an appeal from a judgment entered following a bench trial, the trial court's findings will not be disturbed unless they are against the manifest weight of the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 251, 779 N.E.2d 1115, 1130 (2002) A decision is against the manifest weight of the evidence only when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Eychaner*, 202 Ill. 2d at 252, 779 N.E.2d at 1130.

¶ 12 An insurer who indemnifies its insured for a loss may be subrogated to the rights of the insured against the party at fault. *State Farm General Insurance Co. v. Stewart*, 288 Ill. App. 3d 678, 686, 681 N.E.2d 625, 630 (1997). One who asserts a right of subrogation steps into the shoes of the one whose claim or debt it has paid and can only enforce those rights which the latter could enforce. *Dix Mutual Insurance Co. v. LaFramboise*, 149 Ill. 2d 314, 319, 597 N.E.2d 622, 624 (1992). In this case, Rockford Mutual stepped into the shoes of its insureds, and filed an action against the defendant to recover the sum it paid for repairs to its insureds' vehicle. As such, Rockford Mutual had the burden to prove by a preponderance of the evidence all necessary elements of a negligence action, including proof of damages.

¶ 13 Proof of damages requires a showing of both the existence of the damages, and the extent of those damages. *Vandermyde v. Chicago Transit Authority*, 73 Ill. App. 3d 984, 994, 392 N.E.2d 48, 54-55 (1979). To establish the existence of damages, a party must present evidence to show that a defendant's negligent act or omission was a proximate cause of a plaintiff's injury. *Vandermyde*, 73 Ill. App. 3d at 994, 392 N.E.2d at 54-55. Proximate cause includes "cause in fact," and "legal cause." *Thacker v. UNR Industries*,

*Inc.*, 151 Ill. 2d 343, 354, 603 N.E.2d 449, 455 (1992); *Kleiss v. Bozdech*, 349 Ill. App. 3d 336, 350, 811 N.E.2d 330, 341 (2004). The issue here is whether the plaintiff met its burden to prove “cause in fact.” A plaintiff may establish “cause in fact” with circumstantial evidence. *Kleiss*, 349 Ill. App. 3d at 351, 811 N.E.2d at 341. Circumstantial evidence is the proof of certain facts and circumstances from which the finder of fact “ ‘may infer other connected facts which usually and reasonably follow according to \*\*\* common experience. ’ ” *Thacker*, 151 Ill. 2d at 357, 603 N.E.2d at 456 (quoting *Devine v. Delano*, 272 Ill. 166, 180, 111 N.E. 742, 748 (1916)). When circumstantial evidence is relied upon, that evidence must support an inference that is reasonable and probable, not merely possible. *Stojkovich v. Monadnock Building*, 281 Ill. App. 3d 733, 739, 666 N.E.2d 704, 709 (1996). While a plaintiff is not required to produce unequivocal or absolute evidence of causation, a plaintiff’s proof may not be based on speculation or conjecture. *Stojkovich*, 281 Ill. App. 3d at 739, 666 N.E.2d at 709.

¶ 14 To prove the extent of the damages, a party is required to establish a reasonable monetary value for the damages claimed. *Vandermyde*, 73 Ill. App. 3d at 994, 392 N.E.2d at 55. Ordinarily, the measure of damages to personal property is the reasonable cost of the repairs. *Lucas v. Bowman Dairy Co.*, 50 Ill. App. 2d 413, 417, 200 N.E.2d 374, 376 (1964). It is well established that proof of payment in full of a repair bill is *prima facie* evidence of the extent of damages. *Millburn Mutual Insurance Co. of Lake Villa v. Glaze*, 86 Ill. App. 3d 1055, 1061, 410 N.E.2d 295, 300 (1980).

¶ 15 In this case, the defendant's vehicle struck the rear of Waier vehicle. Shortly after the accident, Darlene Waier took the vehicle to a repair shop, where repairs were made to the vehicle's rear structures and seat belts. The repair shop submitted its invoice for the repairs in the sum of \$7,989.80, and Rockford Mutual paid the invoice upon being presented with proof of the loss. Given the known facts and circumstances, the inference that the Waier vehicle sustained damage to its rear structure and seat belts as a result of being struck from behind by the defendant's vehicle is both reasonable and probable. The defendant presented no evidence to the contrary. There is no evidence that the Waier vehicle had preexisting damage, or that it was damaged in an event following the rear end collision on September 15, 2011. After reviewing the record, we find that the evidence and the reasonable inferences derived therefrom support the trial court's finding that the defendant's negligence was a proximate cause of the damage to the Waier vehicle.

¶ 16 Further, the record before us discloses no challenges to the cost of the repairs. Rockford Mutual's adjuster testified that the Waier vehicle was insured under a policy issued by Rockford Mutual, and that Rockford Mutual paid in full the repair invoice when it was presented for payment. There is no indication that the defendant objected to the adjuster's testimony. The defendant did not offer evidence to cast doubt on the extent of the damage to the vehicle or the reasonableness of the repairs. The testimony that the repair bill was paid in full is *prima facie* evidence of the extent of the damages.

¶ 17 In this case, the evidence, along with the reasonable inferences from that evidence, is adequate to support the trial court's findings, based on a preponderance of the evidence, that the negligence of the defendant was a proximate cause of the damage to

the Waier vehicle, and that the reasonable costs of necessary repairs totaled \$7,989.80.

The court's findings are not against the manifest weight of the evidence.

¶ 18 Accordingly, the judgment of the circuit court is affirmed.

¶ 19 Affirmed.