2018 IL App (1st) 171694-U

SECOND DIVISION
October 9, 2018

No. 1-17-1694

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHADANA MYATT, Plaintiff-Appellee, v. CASSENS TRANSPORT COMPANY, an Illinois corporation, and CLARENCE C. DALE, Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County, Illinois No. 2014 L 010034 Honorable Daniel Gillespie, James Flannery, and Thomas J. Lipscomb, Judges Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion by (i) barring defendants' expert witness from testifying as a sanction for his failure to comply with discovery requests or (ii) excluding cumulative deposition testimony as an evidentiary admission.

¶ 2 Plaintiff Chadana Myatt's vehicle was rear-ended by a truck owned by defendant Cassens Transport Company and driven by defendant Clarence Dale, Cassens' employee. Myatt brought a personal injury suit against Cassens and Dale. Following trial, the jury returned a verdict for Myatt, found her 27% contributorily negligent, and awarded net damages of $1.5 million.

¶ 3 On appeal, defendants argue that the trial court erred by (i) barring defendants' expert witness, Dr. George Dohrmann, for failing to produce Internal Revenue Service Form 1099s as proof of income and (ii) not allowing defendants to use Myatt's deposition testimony as an evidentiary admission regarding what lane of traffic she was in when the accident occurred. We disagree and affirm.

¶ 4 BACKGROUND

¶ 5 On October 8, 2013, shortly after 5 p.m., Myatt was driving east on I-88 in stop-and-go rush hour traffic. She came to a complete stop with her foot on the brake. She had just drunk from a can of soda and was setting it down when Dale's truck rear-ended her at 10 to 15 miles per hour. The impact caused the can to strike Myatt's tooth. Myatt's car was pushed forward a couple feet, but she did not collide with the vehicle in front of her.

¶ 6 Myatt filed suit against defendants on September 25, 2014, seeking damages for the injury to her tooth as well as chronic neck, shoulder, and head pain that allegedly resulted from the accident.

¶ 7 Before trial, on January 20, 2015, Myatt served requests for production on defendants. In relevant part, the requests sought production of "[a]ll Internal Revenue Service Form 1099s given to any person who will testify at trial by any party, attorney for any party, insurance company or agent therewith within the last five years." (Form 1099 is used to report various types of income other than wages and salaries.) Myatt also requested, for all of defendants' experts, documents indicating their annual income from expert witness work. Defendants responded that such documents were "undetermined at this time" and would be produced as required by law at the appropriate time.

¶ 8 More than a year later, on November 9, 2016, defendants disclosed Dohrmann, a neurosurgeon, as a retained expert witness pursuant to Illinois Supreme Court Rule 213(f)(3) (eff. Jan. 1, 2007). Dohrmann was expected to testify on "issues of proximate cause, nature and extent of plaintiff's injuries, permanency, and past and future medical care and treatment." Specifically, defendants stated:

> "It is Dr. Dohrmann's opinion that Plaintiff has progressive degenerative disease of the spine. It is his opinion that the progressive degenerative disease of the spine was not caused by the motor vehicle accident of October 8, 2013 and the course of the plaintiff's progressive degenerative disease of the spine was not changed by the 10/8/13 motor vehicle accident. *** [A]ny medical treatment received by the plaintiff after 3 months past [the] motor vehicle accident was not related to the 10/8/13 accident."

Myatt raised no issue regarding Dohrmann's qualifications or the adequacy of disclosure of his opinions.

¶ 9 Trial was set for March 7, 2017, and the deadline for expert witness depositions was December 7, 2016. Two weeks past that deadline, on December 22, 2016, Myatt served Dohrmann with a notice of deposition. Defendants moved to quash the notice as untimely, but the trial court denied their request and extended the time to depose defense experts to January 31, 2017.

¶ 10 Myatt sought production of documents in connection with Dohrmann's deposition. In relevant part, Myatt asked defendants to identify Dohrmann's "annual income from legal-medical matters within the past 5 years." She did not request 1099s or any other specific tax forms reflecting the income. Defendants filed a response in which they stated, "No document containing the requested information exists." In response to a different request by Myatt

regarding their correspondence with Dohrmann, defendants produced three bills for Dohrmann's services that totaled $8025.

¶ 11 At Dohrmann's deposition on January 25, 2017, he testified that 1099s were sent to him reflecting amounts paid for expert witness work, but he did not keep them. He did keep a list of income received from medical-legal consulting over the past five years, and he could provide it "[i]f I am supposed to." Counsel for Myatt pointed out that Myatt already requested production of that information. Dohrmann said he thought he had produced everything requested, "but maybe [he] just didn't remember that aspect." He reiterated that he was willing to provide a copy.

¶ 12 When asked if he had an accountant, Dohrmann stated that he was in the process of getting a new one. Counsel for Myatt asked for the name of his previous accountant. Dohrmann replied, "I don't have that information with me right now. Well, I think I remember. But I don't want to be inaccurate. *** No, actually I—I really don't recall. It has been a little while." He stated that his accountant never told him to keep his 1099s, but he could not recall whether he filed his tax returns or his accountant did.

¶ 13 Counsel for Myatt then asked Dohrmann how much of his annual income came from testifying as an expert witness. Defense counsel interjected: "[Y]ou don't have to provide that information if you don't want to. You can give your percentage." Dohrmann stated that less than 10% of his annual income came from testifying as an expert witness, but he declined to give an exact number or say whether it was more or less than $10,000. He did not keep track of how often he was retained by plaintiffs as opposed to defendants, but he estimated that he was retained by plaintiffs around one-fourth to one-third of the time. He could not recall the name of

any lawyer he worked for in the past five years. Counsel for Myatt asked if Dohrmann had a medical condition affecting his memory; Dohrmann denied it.

¶ 14 Counsel for Myatt then asked Dohrmann whether he was involved in *Dohrmann v. Swaney*, 2014 IL App (1st) 131524. In that case, Dohrmann sued one of his neighbors, an elderly widow, seeking to enforce an alleged contract in which the widow agreed to give Dohrmann over $5.5 million in assets in exchange for Dohrmann's agreement to add the widow's surname to the names of his minor sons. Dohrmann admitted involvement but stated that, because the case was ongoing, he would not comment further. Counsel for Myatt told him that the case was over, since the appellate court had issued an opinion and the Illinois Supreme Court had denied his petition for leave to appeal, but Dohrmann still refused to discuss the case.

¶ 15 On January 27, 2017, Myatt moved to bar Dohrmann's testimony due to his evasive answers and failure to answer questions. Alternatively, she asked the court to (i) compel him to produce "expert witness income documents requested by Plaintiff" and (ii) allow her to re-depose him on all issues that he failed to answer. She did not explicitly request production of any specific tax forms.

¶ 16 Following a hearing on February 1, 2017, the trial court, per Judge Daniel Gillespie, ordered Dohrmann to produce (i) a list reflecting his expert witness income from the past five years; (ii) his 1099s from the past three years; and (iii) the first two pages of his 1040s from the past two years. The court stated that Dohrmann "appeared evasive" at his deposition and it seemed incredible that he was unable to answer questions about his income. But the court denied Myatt's request to re-depose Dohrmann regarding his personal lawsuit.

¶ 17 On February 8, 2017, Dohrmann produced a one-page document reflecting his expert witness income from the past five years, which provided, in its entirety:

"2012----------$45,550

2013----------$42,275

2014----------$44,175

2015----------$42,750

2016----------$43,850"

The remainder of the page is blank. Dohrmann did not reveal any information about the sources of his income, nor did he produce the tax documents ordered by the court. With regard to his 1099s, Dohrmann filed an affidavit stating: "I do not, and it is not my practice to, retain any 1099 tax forms. Any 1099 forms that I receive are shredded upon receipt. They are not provided to any accountant." With regard to Dohrmann's 1040s, defendants filed a motion to reconsider, stating that the production request was overbroad because those tax forms reflected the joint income of Dohrmann and his wife.

¶ 18 At a hearing on defendants' motion to reconsider on February 21, 2017, the trial court ruled that Dohrmann was not required to produce his 1040s, but he was still required to produce his 1099s. The court stated that it orders experts to produce 1099s "all the time" and that Dohrmann, as an experienced expert witness, knew or should have known that he would have to produce those documents. Thus, the court barred Dohrmann from testifying at trial, but stated that it would vacate that order if Dohrmann produced his 1099s from the past two years by March 1.

¶ 19 As noted, trial was set for March 7. On March 1, defendants filed an emergency motion to reconsider the order barring Dohrmann, which the trial court denied on March 3. The court stated that the documentation tendered by Dohrmann was "woefully inadequate" and did not offer Myatt an opportunity for meaningful cross-examination. Additionally, the court observed

that even if Dohrmann did not retain the forms at issue, he could have readily retrieved them from the IRS website.

¶ 20 Later that day, defendants filed an emergency motion to continue trial to give them time to retain a different expert witness. Defendants argued that they did not cause or contribute to Dohrmann's noncompliance with the court's discovery orders. After hearing arguments of counsel, the court, per Judge James Flannery, denied the motion.

¶ 21 On March 7, defendants renewed their motion to continue before the trial judge, Judge Thomas Lipscomb. The court denied their motion again, stating that an expert witness's failure to produce financial records is grounds for barring the expert from testifying at trial.

¶ 22 At trial, Myatt offered medical witnesses as to causation and damages. Neurosurgeon Sean Salehi, one of Myatt's treating physicians, testified that MRI scans revealed minimal subluxation (*i.e.*, misalignment) of vertebrae in Myatt's spine. He stated that such injuries can result from automobile accidents: whiplash causes muscle spasms, which in turn cause insufficient support to the cervical spine, which leads to slippage of the vertebrae. Salehi opined that the car accident caused or exacerbated the 28-year-old Myatt's condition, because she was relatively young and had no disc degeneration to indicate a preexisting condition.

¶ 23 Anesthesiologist Intesar Hussain, another of Myatt's treating physicians, testified that Myatt has chronic pain that significantly impairs her functioning on a daily basis. He opined to a reasonable degree of medical certainty that her condition was caused by the car accident, because she was asymptomatic before the accident occurred. He also opined that her pain would continue "chronically without abatement" and she would require re-evaluations and procedures to control the pain on a permanent basis.

¶ 24 Defendants did not have an expert to rebut Myatt's medical experts, although they submitted an offer of proof as to Dohrmann's opinions.

¶ 25 Regarding the accident itself, there was conflicting testimony as to whether it was precipitated by Myatt merging into Dale's lane, or whether Myatt was in Dale's lane all along. I-88 has four eastbound lanes of traffic. Dale testified that prior to the accident, he was in the second lane from the right, maintaining 40 feet of distance between him and the vehicle in front. Myatt was in the third lane from the right. She attempted to merge into the second lane by pulling in front of Dale, and then braked "medium to hard," coming to a complete stop a few feet away from him. Dale applied his brakes but still hit Myatt; the impact occurred when Myatt was three-quarters of the way into Dale's lane.

¶ 26 Myatt testified that when she got on the highway, she moved into the second lane from the right, where she remained until the accident occurred. She denied being in the third lane. On cross-examination, counsel for defendants impeached her with the following testimony that she gave at her deposition:

"COUNSEL: Can you describe to me what lane you were traveling in, you know, within the 30 to 45 seconds before the accident?

MYATT: The third lane from the right. There is four lanes, so the third lane from the far right.

Q. Okay. How long were you in that lane?

A. For a while. I want to say a few minutes.

Q. Third lane from the right?

A. Yes."

As an explanation for this apparent inconsistency, Myatt explained at trial that at her deposition, she was counting the entrance ramp on the far right as an additional lane, so her "third lane" was the same as Dale's "second lane."[1]

¶ 27 During defendants' case-in-chief, defendants asked to read Myatt's deposition testimony into the record as an evidentiary admission regarding what lane she was in prior to the accident. The trial court denied the request, stating that defendants had already impeached Myatt with her deposition testimony, and it was "for the jury to decide *** [and] for the attorneys to argue" how to interpret it in light of her trial testimony. The court permitted defendants to make an offer of proof regarding Myatt's deposition testimony.

¶ 28 In closing argument, defense counsel argued that Myatt caused the accident by merging into Dale's lane from the third lane. "And how do we know that she was in the third lane?" counsel asked. "Well, a couple of ways. Number one, she testified to it. She testified to it at a prior deposition that we brought into the courtroom ***."

¶ 29 The jury returned a verdict for Myatt but found her 27% contributorily negligent and awarded her net damages of $1,551,566.82.

¶ 30 ANALYSIS

¶ 31 On appeal, defendants argue that the trial court erred in (i) barring Dohrmann's testimony and denying them a continuance to obtain a replacement expert and (ii) excluding as an evidentiary admission Myatt's deposition testimony about what lane she was in prior to the accident. We consider these arguments in turn.

¶ 32 Barring Dohrmann's Testimony

[1] Even this explanation is inconsistent with Myatt's deposition, in which she said there were only four lanes.

¶ 33 Defendants argue that barring Dohrmann's testimony for failure to produce his 1099s, thereby forcing defendants to proceed to trial without an expert on the issues of causation and damages, was unjustifiably harsh and constitutes reversible error. We review the trial court's imposition of discovery sanctions under an abuse of discretion standard. *Cronin v. Kottke Associates, LLC*, 2012 IL App (1st) 111632, ¶ 42.

¶ 34 A trial court has inherent authority to impose sanctions for failure to comply with discovery orders. *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 65 (trial court properly used its inherent authority to order defendant's attorney to pay plaintiff's attorney fees as sanction for discovery violations). Additionally, Illinois Supreme Court Rule 219 (eff. July 1, 2002) provides that if "a party, or any person at the instance of or in collusion with a party," unreasonably fails to comply with the court's discovery orders, the court may issue various sanctions, including barring witnesses from testifying on any issue to which the refusal relates.

¶ 35 Initially, defendants argue that the trial court lacked authority to impose sanctions under Rule 219 because there was no evidence that Dohrmann acted "at the instance of or in collusion with a party." Myatt does not argue that defendants encouraged or prompted Dohrmann to destroy his 1099s, nor would the record support any such inference. But "[t]he failure to make [discovery] disclosures in a timely and complete fashion justifies sanctions against the parties, even if the failure is the result of actions taken or not taken by the controlled witnesses themselves." *Kubicheck v. Traina*, 2013 IL App (3d) 110157, ¶ 39. Moreover, even where Rule 219 is inapplicable, the trial court can still exercise its inherent authority to impose sanctions for discovery violations (*Cronin*, 2012 IL App (1st) 111632, ¶ 39), and, in fact, it does not appear that the trial court relied specifically upon Rule 219 in barring Dohrmann. Accordingly, the trial court had authority to impose sanctions in this case.

¶ 36 Defendants next argue that barring Dohrmann was an abuse of discretion because it denied them a trial on the merits on the issues of causation and damages. It is well established that the purpose of discovery sanctions is to coerce compliance with discovery rules, not to punish. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 123 (1988). Accordingly, a "just" order of sanctions ensures both discovery and trial on the merits to the greatest degree possible. *Id.* Barring an opinion witness from testifying is a "drastic sanction" that should be exercised sparingly. *McGovern v. Kaneshiro*, 337 Ill. App. 3d 24, 37 (2003).

¶ 37 Myatt argues that barring Dohrmann was a just sanction under the circumstances because without Dohrmann's 1099s, she could not meaningfully cross-examine him regarding his expert witness income at trial. In making this claim, Myatt relies principally on *Sears v. Rutishauser*, 102 Ill. 2d 402 (1984), and *Trower v. Jones*, 121 Ill. 2d 211 (1988), in which our supreme court held that, when cross-examining an opposing expert, counsel must be allowed to probe for bias, partisanship, or financial interest. Specifically, *Trower* held that it was proper to cross-examine an expert witness about his annual income from services relating to expert witness testimony for the two years preceding trial. *Trower*, 121 Ill. 2d at 222. *Sears* held that it was reversible error not to allow defense counsel to cross-examine plaintiff's expert about the number and frequency of patient referrals from the plaintiff's attorney. *Sears*, 102 Ill. 2d at 411.

¶ 38 Both holdings are animated by a common concern that retained experts might be tempted to color their findings and testimony to be more favorable to their employers. As *Sears* stated:

> " '[T]he expert is often the hired partisan and his opinion is a response to a pecuniary stimulus. *** The field of medicine is not an exact science, and the expert being immune from penalties for perjury, his opinion is too often the natural and expected result of his employment.' " *Id.* at 407 (quoting *Opp v. Pryor*, 294 Ill. 538, 545-46 (1920)).

This is of particular concern where the expert is a "professional witness," in that a significant portion of the expert's livelihood depends on being hired as a witness. *Trower*, 121 Ill. 2d at 218. Accordingly, the jury's search for truth "is facilitated by the opportunity to weigh the credibility of each witness" (*Sears*, 102 Ill. 2d at 409), which, in turn, is facilitated by robust cross-examination by opposing counsel. *Trower*, 121 Ill. 2d at 217.

¶ 39 Myatt argues that Dohrmann's refusal to produce his 1099s deprived her of the opportunity to meaningfully cross-examine him regarding his financial interests as a retained expert. We agree. From 2012 to 2016, Dohrmann allegedly made between $42,000 and $46,000 per year as a retained expert, which he claimed represented less than 10% of his annual income.[2] But Dohrmann refused to substantiate these assertions with his 1099s. Instead, the proof-of-income document that he provided was a barebones list of gross dollar amounts next to five years, with no further information. Under these circumstances, Myatt's opportunity for robust cross-examination was significantly curtailed.

¶ 40 In this regard, *Fraser v. Jackson*, 2014 IL App (2d) 130283, is instructive. The *Fraser* plaintiff sued defendant for damages resulting from a motor vehicle collision. Defendant retained a neurosurgeon, Dr. Skaletsky, to evaluate plaintiff. Plaintiff, wishing to cross-examine Skaletsky as to whether "he said the same thing in every case," requested production of all correspondence and reports that Skaletsky authored in his capacity as medical consultant or expert in the last five years. *Id.* ¶ 13. Skaletsky refused, citing physician-patient privilege. The

[2] This last claim is questionable in light of Dohrmann's admission that he has had no operating privileges at any hospital since 2006. He claimed to perform spinal surgeries at a downtown office rented from a lawyer, using a local anesthetic and without an anesthesiologist. He initially described the office as a surgical center, but when asked whether it was registered with the state, he backpedaled and said it was not, in fact, a surgical center. But since Dohrmann refused to produce financial information, Myatt had no effective means of cross-examining on this point.

trial court ordered Skaletsky to comply with the production request, and, when Skaletsky failed to do so, the court barred him from testifying, finding that defendant "continuously and systematically disregarded" the court's discovery orders. *Id.* ¶ 30. We affirmed, observing that, under the circumstances, "plaintiff's ability to effectively cross-examine Dr. Skaletsky was substantially impaired" (*id.* ¶ 31): plaintiff could not argue that he "said the same thing in every case" without knowing his opinions in previous cases. Moreover, "[a]t any point during these events, defendant could have complied with discovery and avoided the sanction imposed." *Id.* ¶ 30.

¶ 41 Likewise, here, Dohrmann "continuously and systematically disregarded" the court's discovery orders. When initially asked to provide proof of his expert witness income, Dohrmann asserted via counsel that "[n]o such document containing the requested information exists." During his deposition, Dohrmann admitted having such a document, but he continued to be evasive regarding his income. For instance, he would not provide the names of any of his clients, which would have allowed plaintiff to subpoena tax information from those parties; instead, he made the incredible claim that he could not remember the name of any attorney that he worked for in the last five years. Finally, when the court ordered him to produce his 1099s as proof of his expert witness income, Dohrmann refused.

¶ 42 Defendants argue that *Fraser* is distinguishable because Dohrmann, unlike the expert in *Fraser*, did not have the documents requested by the court; having already shredded his 1099s, he was unable to comply with the court's production order. For the same reason, defendants also argue that barring Dohrmann was unduly punitive. See *Shimanovsky*, 181 Ill. 2d at 123 (purpose of discovery sanctions is to coerce compliance with discovery rules, not to punish). But, as the trial court pointed out, Dohrmann could have readily retrieved new copies of his 1099s from the

IRS website. A "Wage and Income Transcript," available online or by mail in 5 to 10 business days, provides data from 1099s for up to 10 prior years. Internal Revenue Service, https://irs.gov (last visited September 10, 2018) (click on "Get Your Tax Record," then "transcript types"). Nor can defendants reasonably claim ignorance of this fact, because online ordering of tax records is discussed in the tax publication that defendants attached to their March 1 motion to reconsider.

¶ 43 In light of these facts, we do not find the trial court's orders to be unnecessarily punitive. The trial court first ordered Dohrmann to produce his 1099s on February 1, 2017. If, at that time, Dohrmann had ordered a Wage and Income Transcript from the IRS, he would have obtained it well before the March 7 trial date. Instead, the record reflects no efforts by Dohrmann to comply with the court's production order regarding his tax forms. In the face of Dohrmann's continued noncompliance, on February 21, the trial court barred him from testifying. But even that order was tailored toward coercing Dohrmann's compliance, because the court provided that it would vacate its order if Dohrmann produced his 1099s from the past two years by March 1. Defendants thus had ample opportunity to avoid sanctions—an opportunity of which they chose not to avail themselves. See *Rosen v. Larkin Center, Inc.*, 2012 IL App (2d) 120589, ¶ 20 (affirming trial court's decision to bar plaintiff as a witness, since plaintiff could have avoided sanction by complying with court order but chose not to).

¶ 44 Defendants argue that IRS regulations do not require taxpayers to keep their 1099s, an assertion which Myatt disputes. We need not resolve this issue, because even assuming that defendants are correct, a taxpayer can readily obtain new copies from the IRS if required by court order.

¶ 45 Defendants' related assertion that when the trial court barred Dohrmann's testimony, it should have allowed them a continuance to start over with a new expert fares no better. By

March 2017, the case had been pending for two and a half years. During Dohrmann's deposition, if not before, defendants learned of Dohrmann's practice of not keeping 1099s and his claimed inability to recall the name of his accountant or even one attorney who had retained him in the previous five years. Yet instead of acting promptly to attempt to retain a new expert, defendants persisted in their efforts to have Dohrmann testify without disclosing his expert witness income. Given this strategy, the trial court was not obligated to delay the trial so that defendants could obtain a substitute expert. See *Somers v. Quinn*, 373 Ill. App. 3d 87, 96 (2007) (trial court did not abuse discretion in denying party's request for a continuance after disqualifying the party's expert, since the party did not diligently attempt to secure a new expert after learning the information that led to the expert's eventual disqualification).

¶ 46 Accordingly, we do not find that the trial court abused its discretion by barring Dohrmann from testifying and denying defendants a continuance to find a new expert.

¶ 47 Myatt's Deposition Testimony

¶ 48 Defendants next argue that the trial court erred by not allowing them to introduce Myatt's deposition testimony during their case-in-chief as an evidentiary admission. See *Herman v. Power Maintenance & Constructors, LLC*, 388 Ill. App. 3d 252, 360 (2009) (an evidentiary admission, unlike a judicial admission, may be contradicted or explained). Specifically, defendants wanted to read to the jury Myatt's admission that she was in the third lane of traffic prior to the accident. Myatt argues that even if the trial court erred, any error was harmless, since the jury heard the impeaching testimony during the defense's cross-examination of Myatt. We review the trial court's decision concerning the admissibility of evidence for an abuse of discretion. *CFC Investment, L.L.C. v. McLean*, 387 Ill. App. 3d 520, 526 (2008).

¶ 49 Here, the trial court did not abuse its discretion by refusing to admit Myatt's deposition testimony as an evidentiary admission because it was cumulative; as noted, the jury already heard the testimony during defendants' cross-examination of Myatt. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 482, 495 (2002) (trial court did not abuse its discretion in excluding cumulative testimony).

¶ 50 Defendants argue that, because Myatt's deposition testimony was not introduced during defendants' case in chief, the jury could not consider it as substantive evidence. But the jury was never instructed not to consider Myatt's deposition testimony as substantive evidence, and, in fact, defense counsel argued it as substantive evidence during closing argument. More fundamentally, there were only two versions of the accident given at trial: either Myatt was in the second lane (as she testified), or she was in the third lane (as Dale testified). If the jury found Myatt's trial testimony not to be credible, because of her deposition testimony or for any other reason, the only other possible conclusion would be that Myatt was in the third lane. Under these circumstances, there is no difference between believing Myatt's deposition testimony to be substantively true and disbelieving her trial testimony due to her perceived lack of credibility.

¶ 51 For the same reasons, even if the trial court's ruling was in error, any such error was harmless. See *Gulino v. Zurawski*, 2015 IL App (1st) 131587, ¶ 84 (although trial court erred in limiting expert witness's testimony, such error was harmless where the jury heard the same opinion from another witness). This is particularly true in light of the fact that the jury apparently believed Myatt's deposition testimony over her trial testimony, since they found Myatt to be 27% contributorily negligent. Given the undisputed testimony that Myatt came to a full stop before she was rear-ended by Dale, the only basis for finding her negligent would be that she merged into Dale's lane shortly before the collision.

¶ 52 CONCLUSION

¶ 53 The trial court did not abuse its discretion by barring Dohrmann from testifying for his refusal to comply with discovery orders, nor did it abuse its discretion by not allowing defendants to introduce cumulative evidence during their case in chief. For these reasons, we affirm the judgment of the trial court.

¶ 54 Affirmed.