2018 IL App (2d) 170927-U
No. 2-17-0927
Order filed August 31, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GILLIAN McLAUGHLIN,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-L-515
	)	
CHRISTOPHER ZUBEL and ALLISON ZUBEL,	)	
	)	
	)	
Defendants	)	Honorable
	)	Michael J. Fusz,
(Christopher Zubel, Defendant-Appellee).	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied plaintiff's motion for judgment notwithstanding the verdict on the issue of contributory negligence because there was evidence of plaintiff's proportionate fault. The trial court did not abuse its discretion regarding the admission of photographic evidence, evidence of plaintiff's golfing habits, or expert testimony.

¶ 2 This case arises out of a parking lot collision between plaintiff, Gillian McLaughlin, and defendant, Christopher Zubel. Following a jury trial, the circuit court of Lake County entered judgment on the six-person jury's verdict in favor of plaintiff and against defendant on liability, but awarding plaintiff only $10,000 in damages instead of the $200,000 plaintiff sought and

finding plaintiff 40% contributorily negligent. Plaintiff appeals, arguing that the trial court erred in denying her motion for judgment notwithstanding the verdict (judgment *n.o.v.*) on the issue of contributory negligence and erred regarding several evidentiary issues. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We summarize the pertinent facts. Plaintiff is a retired Chicago police officer and an avid golfer. On July 24, 2013, she and her son, Joseph Bunta, played a round of golf at the Pine Meadow Golf Club in Mundelein. Following their round, plaintiff and her son returned to plaintiff's car to return to plaintiff's home. Both plaintiff and Bunta were wearing their seatbelts. Plaintiff testified that she drove for about 200 feet in the center of the aisle between the parking stalls to either side of the aisle. The stalls were perpendicular to the direction of plaintiff's travel. Plaintiff testified that she proceeded at a speed of about 5-10 miles per hour and kept to the center of the aisle. As she was proceeding, her car was struck by another car backing out of its parking stall. Plaintiff testified variously that the accident was almost instantaneous, that she did not see the car until it was coming out of the stall to hit her car, that the car abruptly came out of its parking stall, that as she approached the spot, she "saw his car accelerating, although he was backing up," and that she did not see the car's brake lights, but she did see its "back-up lights."

¶ 5 Plaintiff testified that, when she became aware that defendant's car was going to hit her car, she braced herself by clenching the steering wheel with her hands, which were at the 10 and 2 o'clock positions, and she braked, stopping at essentially the point of impact. Plaintiff testified that the collision was a "big crash" which moved her car up and down. Plaintiff testified that the point of impact was on the front passenger side, both at the "[f]ront wheel well door panel," and at "the wheel well and the crease at the door." Plaintiff testified that, upon the collision, she felt

pain radiating from her right wrist up to her right shoulder, and she told her son about it before she got out of the car.

¶ 6 Plaintiff testified that, after the collision, she got out of her car and defendant got out of his car. Plaintiff testified that defendant told her that he was very sorry, that he did not see her, and that he was looking at his phone. Although plaintiff had informed her son about the shoulder pain, she could not remember whether she also told defendant at that time about the pain in her shoulder. Plaintiff testified that she thought she "probably told" defendant that she was "all right" because she was not bleeding.

¶ 7 Bunta testified substantially similarly to plaintiff. He testified that he and his mother had completed a round of golf, after which they returned to his mother's car to leave the course. Bunta was sitting in the front passenger seat. Bunta estimated that they were traveling about 5-10 miles an hour as they proceeded to the exit. Bunta could not remember if the radio was on, but there was nothing occurring in the car that would have been distracting to his mother.

¶ 8 Bunta testified that he first saw defendant's car as it was backing into the passenger side of his mother's car. Bunta testified that virtually no time elapsed between the moment he first noticed defendant's car and the moment of the collision; Bunta testified that he did not recall that there was time to call out a warning to his mother. Bunta was unable to assign a value to the speed of defendant's car. Bunta testified that the impact was on the "front right side;" when prompted on cross-examination, Bunta testified that the impact was on the passenger door. Bunta could not recall if he saw defendant's brake lights before the impact, and he could not recall the damage done to his mother's car.

¶ 9 Bunta testified that the impact was "substantial." He described that he was shoved to the left by the impact and, once the impact had ended, he rebounded and his right knee struck the door. Bunta testified that, immediately after the impact, his mother stopped their car. Bunta

testified that, when they had stopped, plaintiff indicated that she was in pain, specifically, in her right shoulder. Bunta did not recall if he got out of the car with his mother, but he managed to hear "[a] little bit" of the conversation between plaintiff and defendant following the accident. Bunta testified that defendant stated that he was sorry, he was not paying attention, and that he was paying attention to his phone. Bunta testified "that was the extent of what [he] heard."

¶ 10 Defendant's description of the collision was similar to plaintiff's and Bunta's. His account of his conversation with plaintiff following the collision, however, was significantly different. Defendant, who is a managing director of a commercial real estate firm responsible for his firm's industrial real estate business, testified that he had finished a round of golf with some coworkers. He returned to his car in the parking lot, which was located in a stall facing the middle of the parking lot. Defendant testified that he started his car, rolled down the windows, "blasted" the air conditioner, and texted his wife to let her know that he was leaving the golf course. Defendant testified that, after the text, he placed the phone on the empty passenger seat, placed his car into reverse while keeping his foot on the brake, looked over his shoulders (right, left, then right again) to see that he was clear to back up, gently took his foot off of the brake, and began to back slowly out of the parking space.

¶ 11 Defendant testified that, as he was backing out, he did not place his foot on the gas pedal, but idled out of the spot; defendant estimated that he traveled at about five miles an hour as he backed out. Defendant also testified that his vision out of the sides of his car was obstructed by cars parked on either side of his. Defendant admitted that he did not see plaintiff's car until he collided with it. Defendant recalled that the collision occurred when he was about halfway out of the parking stall and he was beginning to turn the car. Defendant testified that he struck plaintiff's car at an angle, with the driver's side corner of the rear bumper contacting plaintiff's car above the front passenger's side wheel well. Photos of the damage to plaintiff's car confirm

damage occurring above the front passenger's side wheel well. On both adverse direct examination and again on cross-examination, defendant admitted that he did not have any criticism of how plaintiff was driving in the parking lot.

¶ 12 Defendant testified that the collision between the vehicles was "minimal." After the collision, defendant pulled back into his parking stall, and exited his car to exchange information with plaintiff. Defendant testified that he asked plaintiff if she was okay, and, after she said that she was, they looked at the damage. Defendant testified that he did not say anything else to plaintiff, and he specifically denied that he told her he was sorry for the accident, that he was looking at his phone, or that he was in a hurry. Defendant also authenticated the photos of the damage to plaintiff's car, and those photos were admitted into evidence and published to the jury.

¶ 13 Plaintiff and Bunta both testified that, directly following the collision, they did not call the fire department or an ambulance. They also testified that plaintiff did not immediately go to the emergency room; rather, plaintiff drove the car back to her house. Plaintiff did testify that, the next day, she went to an immediate care facility, but she did not produce any records of the visit and she was unable to name the doctor she saw there or even the particular facility. Plaintiff explained that she wished to see her own doctor, and his earliest available appointment was July 31, 2013.

¶ 14 Plaintiff testified about her medical history as it had bearing on the injuries she attributed to the collision. To begin with, plaintiff testified that, from the age of 21, she had been playing golf consistently. She arranged her work schedule, so far as possible, to accommodate her passion for golf. Upon her 2010 retirement, she played more frequently and joined golf leagues. Plaintiff testified that, in all that time, she had never had a problem with her right shoulder, save in 2009, when she had been diagnosed and treated for a frozen right shoulder. She was able to

resolve the condition with physical therapy before the start of the 2010 golf season. Plaintiff testified that, from 2010 to the July 24, 2013, collision, she had had no problems or issues with her right shoulder.

¶ 15 Plaintiff testified that, after the collision on July 24, her right shoulder hurt, but she did not believe that it required immediate attention. She rested the night after the collision, taking Advil for the pain. Plaintiff then decided to see her doctor, Dr. Adam Bennett. She scheduled an appointment for July 31, 2013.

¶ 16 Plaintiff visited Bennett on the scheduled date, and she described the collision, including how she had braced herself by clenching the steering wheel of her car. Dr. Bennett took a conservative approach to plaintiff's treatment, ordering x-rays, an MRI, and physical therapy. Plaintiff completed the treatment and had a September follow-up visit with Bennett. They discussed her progress and her future options, including the possibility of surgery. Plaintiff was released from Bennett's care with no limitations on her activities, including golf.

¶ 17 Plaintiff testified that she continued to play golf until the weather turned in 2013. During the off-season, plaintiff noted that her shoulder was not improving. She experienced pain while doing ordinary things around her house, like retrieving pots and pans from shelves above her head, vacuuming, washing windows, and cleaning the floors. She also experienced pain from activities requiring stretching motions, such as washing her hair, scrubbing her back, or even putting on makeup. She also noted that she had pain whenever she held her right arm over her head or at face level for any amount of time. Plaintiff testified that her right arm had become much weaker, and she had difficulty opening jars, carrying groceries, or lifting heavy objects.

¶ 18 Plaintiff testified that, before the collision, she had not noticed any problems with day-to-day activities. She explained that she had always been independent and had never had any issues

with strength during her 37-year career as a police officer. She testified that she had always been able to personally maintain her home, including her landscaping and garden.

¶ 19 Plaintiff testified that, because of the continuing pain over the course of the winter of 2013-14, she decided to see Dr. Gordon Nuber, a surgeon in practice with Bennett and whom Bennett had recommended to plaintiff. She consulted with Nuber in March 2014, and on March 19, 2014, plaintiff underwent surgery on her right shoulder. Plaintiff testified that it was a day in/day out procedure, after which she underwent physical therapy. At a June follow-up with Nuber, plaintiff was released to resume her normal activities. Plaintiff testified that, while she was able to resume playing golf without any shoulder pain, the pain she experienced from overhead and day-to-day activities persisted. Plaintiff testified that she was having difficulty in keeping up her garden due to weakness in her hand.

¶ 20 Plaintiff testified that, in April 2016, she returned to Bennett because the pain she was experiencing was not improving. She believed that her shoulder was not improving and she noted that her hand and grip strength continued to decline. Bennett again prescribed physical therapy and administered a cortisone shot in her right shoulder. Plaintiff testified that the shot gave her about 3½ months of relief. Plaintiff testified that, despite Bennett's therapy and shots, she was still experiencing pain at the time of trial.

¶ 21 Plaintiff testified that her medical expenses for the treatment of her shoulder had been paid. Plaintiff detailed bills totaling $30,704.04 from the North Shore Health System, $10,403.19 from Athletico, $15,924.89 from Northwestern Memorial Hospital, and $1,751 from Northwestern Medical Group.

¶ 22 Plaintiff also testified that Bennett had never limited her golfing activities. Plaintiff emphasized that, both before and after the collision, she had no shoulder pain associated with her golf swing, and Bennett had encouraged her to continue golfing.

¶ 23 On cross-examination, plaintiff was questioned about playing golf following the collision. Plaintiff admitted that, following the collision, she played golf four times before seeing Bennett. During her cross-examination, plaintiff objected to the questions about golf as irrelevant, because plaintiff's position was that there was no evidence that she had any shoulder issues during her life, barring the frozen shoulder, and there was no evidence that she ever experienced shoulder pain due to swinging a golf club. Defendant responded to the objection, arguing before the jury that the golf questions were relevant because plaintiff was "going for medical care interweaved with strenuous physical activity." The trial court then admonished defendant to refrain from commentary; at the sidebar, defense counsel admitted that his strenuous-physical-activity remark was uncalled for. The trial court overruled plaintiff's relevancy objection, and defendant persisted in the cross-examination regarding plaintiff's golfing habits. After defendant changed tack in the cross-examination, plaintiff admitted that, from her September 2013 discharge by Bennett until March 2014 when she saw Nuber for her surgical consultation, she did not seek any further medical care for her shoulder. Plaintiff also testified that, if she did not drive a golf cart, she would use an electric hand cart to maneuver her clubs as she walked the course; likewise, she would place and remove her clubs from the trunk of her car herself, and she would store the electric hand cart in her back seat herself.

¶ 24 The balance of the testimony came from plaintiff's medical providers and defendant's medical expert. Bennett testified, via a recorded evidence deposition, that he was a board certified primary care sports medicine physician with expertise in the management of orthopedic injuries. Bennett was the team physician for the Chicago Bears as well as for the U.S. men's and women's national soccer teams. Bennett estimated that, during a busy week, he would see up to 120 patients with musculoskeletal complaints, like knee, back, or shoulder pain.

¶ 25 Bennett testified that, in 2009, he treated plaintiff for a frozen right shoulder. Bennett recalled that plaintiff had been referred by a colleague, who, during treatment for another issue, ordered and obtained an MRI of her right shoulder. On plaintiff's first visit, Bennett examined her and reviewed the MRI. According to Bennett, the MRI suggested that plaintiff had a partial-thickness tear to her rotator cuff and some arthritis in her AC joint, which is a small joint on the top of the shoulder. Bennett ultimately diagnosed plaintiff's condition as a frozen shoulder, administered a cortisone injection, and prescribed physical therapy. Bennett testified that, over time, plaintiff's shoulder got better and her condition resolved completely.

¶ 26 Bennett testified that, despite the evidence of a partial-thickness rotator cuff tear, a person could remain symptom free, which he explained meant that they would not experience pain from the condition. Bennett elaborated that, while the MRI might look the same at different times, the patient could experience pain at some of those times and not others. Bennett testified that there were many activities of daily living as well as acute injuries that could cause pain in plaintiff's shoulder. The acute trauma associated with the collision was an example of something that could aggravate the symptoms of a partial-thickness tear of the rotator cuff.

¶ 27 Bennett testified that, from his release of plaintiff in 2009 to July 2013, he did not again see her as a patient. On July 31, 2013, plaintiff presented as a patient. In taking her history, Bennett learned about the July 24 collision and that, during the collision, plaintiff had clenched the steering wheel after which she had been experiencing pain in her right shoulder. Bennett noted that plaintiff informed him that she did not have pain when she played golf, but her shoulder felt sore from the outside of the shoulder. Plaintiff also informed Bennett that her shoulder would bother her when she was lying down or reaching overhead. Following his examination, Bennett believed that plaintiff had strained muscles around her shoulder blade, a condition he termed "scapulothoracic dysfunction." Bennett also testified that plaintiff's history

was consistent with the results of his examination and his diagnosis that day. Bennett prescribed physical therapy for plaintiff. Bennett did not limit plaintiff's activities or tell her not to play golf, because she told him that golf did not bother her shoulder. Bennett explained that, if she did not experience pain from golfing, then he believed that golf would not be harmful to her shoulder or adversely impact her condition; thus, Bennett concluded that it was safe for plaintiff to golf.

¶ 28 On September 5, 2013, Bennett saw plaintiff for a follow-up visit. On that date, plaintiff's condition had not improved as much as he expected from the course of physical therapy plaintiff was undertaking. Bennett suspected that there might have been a full-thickness tear in the rotator cuff and ordered another MRI. The MRI showed a little more arthritis in the shoulder, but still showed only a partial-thickness tear. Bennett believed that the MRI results were consistent with plaintiff's symptoms following the collision. Bennett testified that persons experiencing symptoms like plaintiff's could be successfully treated with rest, physical therapy, corticosteroid injections, and surgery if the other treatments proved unsuccessful.

¶ 29 Bennett testified that he did not see plaintiff again for about 2½ years. Between September 2013 and her next visit in April 2016, Bennett was aware that she consulted with Nuber and had undergone surgery to address the partial-thickness rotator cuff tear. Bennett opined that the procedure was reasonable and necessary in light of plaintiff's failure to improve under his prescribed conservative treatment regimen.

¶ 30 On April 28, 2016, plaintiff next visited Bennett, presenting with persistent right shoulder pain that was not improving. In fact, plaintiff informed Bennett that, recently, her shoulder pain had gotten much worse and was bothering her when she was sleeping. Bennett's examination revealed that plaintiff was also experiencing weakness. Another MRI, however, showed that plaintiff did not have a full-thickness tear, although it did show that a shoulder tendon had

partial-thickness tears. In Bennett's opinion, the result demonstrated that plaintiff did not need another surgery. Instead, the condition could be treated with another corticosteroid injection in the area of the rotator cuff and more physical therapy.

¶ 31 In December 2016, Bennett next saw plaintiff; they reviewed her continuing symptoms and agreed upon a conservative course of treatment. Plaintiff would continue with her home exercises and, if her symptoms did not improve, then Bennett would give plaintiff another steroidal injection.

¶ 32 On February 2, 2017, Bennett next examined plaintiff. Plaintiff had finished her course of physical therapy. Once again, plaintiff agreed upon Bennett's recommendation for conservative treatment. Plaintiff would continue her home exercise program and, if plaintiff's symptoms worsened, Bennett would consider administering another injection. Bennett testified that, based on this history, plaintiff's anatomical structures would either remain stable or deteriorate over time.

¶ 33 Bennett opined that the July 24, 2013, collision aggravated plaintiff's previously diagnosed partial-thickness rotator cuff tear, and it led to plaintiff's shoulder surgery. Bennett described his reasoning: plaintiff had the rotator cuff injury in 2009, but had been pain free before the collision. After the collision, plaintiff began experiencing shoulder pain. Thus, the collision aggravated the underlying condition. Bennett also testified that the comparison of the MRI results from 2009 and 2013 was somewhat helpful in understanding plaintiff's injury, but he did not focus solely on the MRI results. Bennett testified that, instead, he relied most heavily on plaintiff's reports of her symptoms; the pain that plaintiff was experiencing after the collision caused him to relate the accident to the condition of her shoulder.

¶ 34 Bennett testified that he was familiar with plaintiff's history of playing golf. Bennett believed that persons with a rotator cuff injury could still golf without experiencing any pain.

On the other hand, if a person's shoulder hurt every time he or she swung a golf club, the person could be causing more injury with each swing; however, if the person did not have pain swinging the golf club, then the likelihood that playing golf would cause further injury to the rotator cuff was very small and further injury probably would not occur. Bennett explained that, as a result of the above reasoning, he did not think that plaintiff would have any problems continuing to play golf. Bennett testified that, even though plaintiff was experiencing pain with overhead activities, she did not experience pain when playing golf and this indicated that golf was not causing further injury to her shoulder. Bennett finally opined that golf did not adversely affect plaintiff's treatment or healing process.

¶ 35 Nuber, the surgeon who performed plaintiff's shoulder surgery, testified via a recorded evidence deposition. He testified that he was a board certified orthopedic surgeon who concentrated on shoulders and knees. He held a teaching position at Northwestern University and was the team surgeon for the Chicago Bears; he had previously been affiliated with other Chicago sports teams, local schools, and the Big Ten.

¶ 36 Nuber testified that, on March 6, 2014, he first consulted with plaintiff after she had been referred to him by Bennett. Plaintiff was experiencing pain in her right shoulder and, as part of the history Nuber took from plaintiff, told him about the collision, how she had braced herself by rigidly clenching the steering wheel during the accident, her discomfort following the accident, and her treatment from Bennett. Nuber also reviewed plaintiff's 2013 MRI. According to Nuber, the MRI showed tendinitis, and a partial-thickness tear of the rotator cuff.

¶ 37 Nuber testified that, on March 19, 2014, he performed an arthroscopic shoulder surgery on plaintiff. During the surgery, he directly observed partial-thickness tears of the articular and bursal surfaces of her rotator cuff, along with wear in the cartilage of the ball-and-socket joint of the shoulder. Nuber also observed the presence of a loose body within the shoulder along with

some fraying of the labrum (which he explained was the cartilage rim around the socket of the shoulder).

¶ 38 Nuber testified that he did not "repair" the partial-thickness tears he observed, because "repair" suggests stitching; rather the partial-thickness tears result in the creation of frayed fibers intruding into the spaces of the shoulder, so he instead "treated" the frayed fibers by shaving them to remove them from intruding into the spaces of the shoulder. Nuber testified that, during the surgery, he was presented with what he expected to see based on his presurgical consultation with plaintiff and his review of plaintiff's presurgical records. After the surgery, Nuber prescribed physical therapy for plaintiff.

¶ 39 Nuber opined that plaintiff's need for surgery was consistent with an acute injury and the shoulder surgery was causally related to the collision. Nuber further opined that the mechanism of the injury as explained by plaintiff, namely, clenching the steering wheel to brace herself for the collision, was consistent with the injury he observed and of which plaintiff complained.

¶ 40 Nuber also opined that, given the history plaintiff related to him, the arthritis that he observed in her MRIs, and his direct observations, the surgical procedure he performed was related to the collision. Nuber also opined that the loose body in the shoulder and the articular surface damage he observed were consistent with a trauma of some sort. Additionally, the history that plaintiff related, the MRIs, and the damage to plaintiff's shoulder that he observed during the surgery were all consistent with the opinions he had given. Nuber qualified this testimony by noting that there was no way to date the condition simply by observing it in MRIs and in surgery; instead, he had to rely on the history provided by the patient and any objective evidence that existed.

¶ 41 Nuber opined that, given all of plaintiff's complaints, surgery was reasonable and necessary. Likewise, the postoperative treatment was usual for plaintiff's condition following

the surgery. Nuber also testified that the bills he generated and plaintiff paid were reasonable in the community at the time they were generated.

¶ 42 Finally, Nuber testified that he treated all sorts of athletes during his career, including amateur golfers. Nuber testified that, in his opinion, there was nothing ill-advised about plaintiff trying to play golf after Bennett had seen and treated her.

¶ 43 Defendant's medical expert, Dr. John Player, testified about his review of plaintiff's records. Player testified that he was board certified in orthopedics and, until 2006, had been a practicing orthopedic surgeon, when he was forced to stop performing surgery due to a medical issue. After 2006, Player continued to see patients, but would refer them to others if they needed surgery. During his 37 years of practice, Player had treated many patients with right shoulder problems, probably hundreds. Player testified that, at the time of the trial, he spent about half of his time treating patients and half of his time consulting.

¶ 44 Player testified that he reviewed the 2009 and 2013 MRIs, the office notes of the visits with Bennett and Nuber, Nuber's operative report, and any other notes about visits to other doctors during the relevant time period provided by defense counsel. He formulated his opinions based solely on his review of the documents, and he did not independently examine plaintiff.

¶ 45 Player testified that that both the 2009 and 2013 MRIs were nearly identical and showed an increased signal, a bright, white spot on the film, in the area of the rotator cuff, and specifically at the supraspinatus tendon. Player explained that the increased signal represented a partial-thickness tear in the rotator cuff (due to the frayed part of the tendon). Player opined that, in 2009, plaintiff had the same condition as appeared and as was diagnosed in 2013.

¶ 46 Turning to Nuber's operative report, Player testified that Nuber had observed the fraying of the supraspinatus tendon, and Nuber's observation was consistent with the sort picture that would show up as an increased signal on an MRI result as well as a partial-thickness rotator cuff

tear. Player testified that the fraying of a tendon is consistent with an impingement that causes pressure or rubbing of the surface of the rotator cuff. Impingement could occur in cases where the physiology of the shoulder is such that the acromion, which is the hard bump of the shoulder and which forms the "roof" of the rotator cuff, turns downward a little bit and presses on the top of the cuff. This physiology, the downturning acromion, is termed a "Bigliani type 2" acromion, and increases a patient's risk for rotator cuff tears. (A flat acromion that does not impinge is a "Bigliani type 1" acromion, and a "Bigliani type 3" acromion requires a downsloping acromion that ends with a hook or a beak and is highly correlated with rotator cuff tears.) Player testified that plaintiff possessed the Bigliani type 2 physiology, and that the fraying in the supraspinatus tendon could be explained by the simple rubbing along the acromion when plaintiff moved her arm and shoulder in certain ways.

¶ 47 Player testified that Bennett had reported in plaintiff's July 31, 2013, visit, only that plaintiff was experiencing pain in the muscles around her shoulder blade, called periscapular pain. Player noted that a standard test for a rotator cuff injury had been performed in that visit, called the empty can test. The test consisted of extending the arm at shoulder level and pointing the thumb from up to down, as if one were emptying a can. When the thumb was pointing down, pressure was applied to the arm; pain or discomfort could indicate a rotator cuff injury, while lack of pain indicated no rotator cuff injury. When plaintiff performed the test, she did not have any pain. From this, Player concluded that, on July 31, 2013, after the collision, plaintiff had presented to Bennett with only muscle strains around her shoulder blade. Player opined that a muscle strain such as plaintiff's was not a permanent condition; further, on the September 5, 2013, visit to Bennett, plaintiff's condition either was resolving or had fully resolved. Player based this conclusion on the fact that plaintiff did not seek or receive any medical intervention between that time and her March consultation.

¶ 48 To support his opinion that plaintiff presented with only a muscle strain following the collision, he noted that the only diagnosis appearing in Bennett's notes of plaintiff's July 31, 2013, examination was periscapular dysfunction; likewise, plaintiff's only complaints on that visit were soreness in the muscles around her shoulder blade—she did not evidence any pain associated with her rotator cuff. Similarly, the treatment Bennett ordered was designed to treat the tightness and pain in and around plaintiff's shoulder blade. The notes from plaintiff's physical therapy showed that she had satisfied her physical therapy goals by the time that Bennett formally discharged her from his care in September. Player noted that, moreover, plaintiff had regained a full range of shoulder motion by the end of her physical therapy. Finally, Player opined that plaintiff's described mechanism of injury, namely clenching the steering wheel to brace herself for the impact of the collision, was consistent with the July 31, 2013, diagnosis of muscle strain in and around her shoulder blade.

¶ 49 Player did not level any criticism of Nuber's March 2014, surgery. Player opined, however, that the collision did not cause the need for the surgery. Rather, the problem caused by the collision was the muscle strain around the shoulder blade, and this condition required and received physical therapy and had either resolved fully or was on its way to resolving fully when plaintiff was released by Bennett in September 2013. Player opined that, therefore, the medical expenses that arose out of the collision were solely those associated with the Bennett's evaluation and care of plaintiff and the physical therapy occurring in August and September 2013. Player opined that the expenses incurred thereafter were not related to the accident.

¶ 50 Player also offered an opinion about the causes of the rotator cuff pain that led to plaintiff's surgery with Nuber and her subsequent treatment. Player opined that simple daily living, aging, and any activities involving the upper arm approaching and going above horizontal coupled with plaintiff's Bigliani type 2 morphology led to her rotator cuff pain and inflammation

and subsequent arthroscopic surgery. On cross-examination, Player conceded that there were no records or allegations that plaintiff had experienced any shoulder issues related to daily living or aging prior to the collision. He further conceded that there was no indication of any symptoms in plaintiff's records associated with repetitive motions.

¶ 51 Player opined that the collision did not aggravate the partial-thickness tear of plaintiff's rotator cuff. Player explained that, immediately after the accident, plaintiff did not experience rotator cuff pain, but only pain in and around the muscles of her shoulder blade and the negative result of the empty can test, which indicated no rotator cuff pain and implied no aggravation to the condition at that time.

¶ 52 On cross-examination, Player acknowledged that he had treated patients who did not experience pain before a trauma, but did following the trauma. Player further conceded that, according to his review of plaintiff's records, she had no shoulder problems other than the frozen shoulder in 2009, but that resolved after treatment. Plaintiff experienced no further shoulder issues until after the July 2013 collision. Still on cross-examination, Player agreed that his opinion was not in any way that plaintiff's golfing activities either led to the arthroscopic shoulder surgery or the pain she experienced. Likewise, Player agreed it was not his opinion that the 2009 frozen shoulder led to the 2013 surgery.

¶ 53 During Player's redirect examination, defense counsel asked him, "You were asked if golf was the sole cause of [plaintiff's] problems regarding her shoulder, correct?" Player agreed that he had been asked that question. Defense counsel then asked, "do you have an opinion if golf had any role in the symptoms that [plaintiff] presented to Dr. Bennett and Dr. Nuber?" Plaintiff specifically objected, giving as the bases, "form, foundation and speculation." At the ensuing sidebar, the trial court sustained the objection as to form, overruled it as to foundation, and did not address speculation; the trial court instructed the jury to disregard the question and

any answer that was given (no answer was given to the question objected to; however, plaintiff asserts in her brief on appeal that the preceding question and answer were the ones subject to plaintiff's objection, not the question actually objected to).

¶ 54 On July 17, 2015, plaintiff filed this negligence action against defendant and Allison Zubel. Allison Zubel was included in the complaint not because she was driving or present during the collision, but only because she was alleged to be an owner of defendant's vehicle. On May 9, 2017, plaintiff voluntarily dismissed Allison Zubel from the action and she is not a party to this appeal.

¶ 55 Before the commencement of the trial, plaintiff moved *in limine* to bar testimony about plaintiff's golf habits either before or after the collision. Specifically, plaintiff sought to preclude argument or testimony that golf had caused, had any effect on, or contributed to plaintiff's shoulder injury, as well as argument or testimony that the extent of plaintiff's golfing correlated in any way with the severity of plaintiff's injury or the extent of plaintiff's damages. Plaintiff argued that there was no expert testimony in the case that linked plaintiff's golfing to her injury, so any testimony or argument would be unsupported and irrelevant. The trial court denied plaintiff's motions *in limine* relating to this topic.

¶ 56 Plaintiff also moved *in limine* to preclude the admission of photographs of either her or defendant's vehicles. Plaintiff argued that the damage to the vehicles was not contested in this trial and photographs of the damage would be prejudicial. Specifically, plaintiff contended that the jury would be likely to correlate the apparent damage to the vehicles with plaintiff's injury, but since there was no expert testimony about dynamics and biomechanics of the accident, such a correlation would be speculative and improper. Moreover, according to plaintiff, the photographs would be irrelevant because they did not make any fact in controversy more or less probable.

¶ 57 The trial court granted the motions *in limine* to the extent that they could not be used to argue that a correlation existed between the amount of damage to the vehicles and the extent of plaintiff's injuries. The trial court allowed the use of photographs to demonstrate the point of impact, as there were several different versions of the collision itself being presented at trial and it believed that the photographs could possibly corroborate one of the versions; thus the trial court concluded that they were relevant for purposes of establishing credibility among the expected witnesses.

¶ 58 Plaintiff notes that defendant's closing argument touched on the golf she played after the collision but before her appointment with Bennett. Defendant argued:

> "Be that as it may, [plaintiff] waited a week to see her physician that she had an established relationship with. She just suffered what she'd like you to believe was a traumatic accident and she goes out and golfs the following day. Not only does she golf after the accident, but she golfs in the eighties. People who golf, that's a pretty respectable score. Someone like me, I find more golf balls than I lose [*sic*] when I go out. These were fantastic scores. Not only did she golf the following day after this accident, she golfed the next three days. She golfed four days before she actually presented to Dr. Bennett."

¶ 59 For her part, plaintiff requested medical expenses plus other damages totaling about $200,000. Defendant suggested that plaintiff's rotator cuff issues were unrelated to the collision and suggested that only the medical expenses from the initial visit to Bennett and the subsequent physical therapy should be awarded.

¶ 60 The jury returned a verdict in favor of plaintiff, apportioning the damages in the amount of $8369.56 in medical expenses and $1630.44 for past pain and suffering, totaling $10,000. The

jury then determined that plaintiff was 40% at fault, and reduced her damages to $6,000. The trial court entered judgment on the jury's verdict.

¶ 61 Plaintiff filed a posttrial motion seeking a judgment *n.o.v.* or, alternatively, a new trial. The trial court denied plaintiff's posttrial motion, and plaintiff timely appeals.

¶ 62 II. ANALYSIS

¶ 63 On appeal, plaintiff raises four issues. First, plaintiff argues that the trial court improperly denied her motion for judgment *n.o.v.* Next, plaintiff contends that the trial court abused its discretion in admitting photographs of the parties' vehicles that showed the damage from the collision. Next, plaintiff argues that the trial court abused its discretion in allowing defendant to question plaintiff about her golfing following the collision. Finally, plaintiff contends that Player's opinions about the cause of plaintiff's rotator cuff injury lacked a sufficient foundation and were therefore inadmissible. We consider each argument in turn.

¶ 64 A. Denial of Motion for Judgment *n.o.v.*

¶ 65 Plaintiff initially argues that the trial court erred in denying her motion for judgment *n.o.v.* A motion for judgment *n.o.v.* is properly granted where all of the evidence, viewed most favorably to the nonmoving party, so overwhelmingly favors the moving party that no contrary verdict based on that evidence could ever stand. *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992) (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). In considering a motion for judgment *n.o.v.*, the court does not weigh the evidence or the credibility of the witnesses; rather it considers the evidence and the reasonable inferences arising from the evidence in the light most favorable to the nonmoving party. *Id.* A judgment *n.o.v.* may not be entered if there is any evidence together with reasonable inferences drawn from the evidence demonstrating a substantial factual dispute, or if the assessment of witness credibility or the resolution of conflicting evidence is decisive to the outcome. *Perkey v. Portes-Jarol*, 2013 IL

App (2d) 120470, ¶ 54. We review *de novo* the trial court's decision on a motion for judgment *n.o.v. Id.* With these principles in mind, we turn to plaintiff's specific contentions.

¶ 66 Plaintiff argues that there was literally no evidence to support the jury's apportionment of fault in its verdict. According to plaintiff, the evidence was undisputed that defendant backed into her as she was driving out of the parking lot. Plaintiff also contends that there was no evidence that plaintiff was distracted as she was driving out according to her son's testimony. Plaintiff concludes that there was literally no evidence "to suggest any negligence on plaintiff's part." We disagree.

¶ 67 There was extensive testimony about how plaintiff and defendant collided. Plaintiff, Bunta, and defendant all agreed that defendant collided with plaintiff as defendant backed out of his parking stall. Defendant admitted his vision was partially obscured and he idled out of the parking stall, lightly impacting plaintiff. Plaintiff and Bunta both testified as to a substantial impact, and each testified that the impact occurred more towards the middle of plaintiff's car. Defendant testified to a minimal impact and placed the impact towards the front of plaintiff's car, in the middle of the front passenger wheel well. The objective photographic evidence confirms defendant's account regarding the point of impact. The damage depicted in the photographs, however, tells us nothing about the force of the impact; there was also no expert testimony on the subject. That defendant's account was confirmed by the objective photographic evidence suggests that the jury might have believed defendant's account of a slow exit from his parking stall over plaintiff's and Bunta's accounts that defendant zoomed out of the stall. Indeed, applying the standards for reviewing a judgment *n.o.v.*, we find that there was a significant factual issue regarding the force of the collision as well as the spot of the impact, and this involved weighing the credibility of the witnesses' testimony. This by itself would be sufficient to preclude entry of a judgment *n.o.v.*

¶ 68 In addition, we note that plaintiff testified that she observed defendant's back-up lights as she approached the spot of the collision. This gives rise to a reasonable inference that plaintiff was aware defendant was at least planning to exit his parking stall. While plaintiff had the right of way to proceed, she also had an obligation to avoid the collision. This evidence too supports the jury's apportionment of fault.

¶ 69 Finally, in denying plaintiff's motion for judgment *n.o.v.*, the trial court reasoned that: "there was questioning during [plaintiff's] testimony as well as that of her son as far as how she was traveling, where she was going, what speed she was traveling at in the parking lot, [and] the proximity of other vehicles." The trial court held that the evidence was sufficient to find that plaintiff was negligent, although at a proportion less than 50%. We agree with the trial court's judgment.

¶ 70 Plaintiff argues that none of the evidence was related to negligence on plaintiff's part. As to the point of impact, plaintiff highlights that there was no testimony that related the point of impact to how plaintiff and defendant were driving. We disagree. As noted, the point-of-impact evidence reflected on the credibility of the witnesses and which account of the collision hewed more closely to the objective truth of the collision. We note that this does not mean that defendant was exonerated by this testimony; only that it is evidence supporting the jury's apportionment of fault in the collision as well as evidence that required a credibility determination and factual resolution that places the jury's apportionment beyond the reach of a judgment *n.o.v. Perkey*, 2013 IL App (2d) 120470, ¶ 54.

¶ 71 Plaintiff argues that this case is akin to *Salo v. Singhurse*, 181 Ill. App. 3d 641, 642-43 (1989), in which the jury apportioned 60% of the fault to the plaintiff for a collision even though the plaintiff was traveling on the preferential highway and had the right of way. The intersection was controlled by a flashing yellow light in the plaintiff's direction of travel and by a stop sign in

the defendant's direction of travel. *Id.* at 642. The plaintiff saw the defendant's car approach the intersection and continued to proceed through the intersection when the defendant's car struck his car and knocked him into the ditch. *Id.* The roadways approaching the intersection and the terrain surrounding the intersection were straight and level. *Id.* A third witness testified that the defendant made a rolling attempt to stop at the stop sign before proceeding to strike the plaintiff's car. *Id.* The defendant testified that she did not see the plaintiff's car until she collided with it. *Id.* The jury returned a verdict in favor of the plaintiff but determined that he was 60% at fault for the collision. *Id.*

¶ 72 The appellate court held that, while the Illinois Vehicle Code gave the plaintiff the right of way, the plaintiff was nevertheless obligated to keep a lookout and to take due care in his driving to avoid collisions. *Id.* at 643. With that said, however, the plaintiff had the right to expect the defendant to obey the traffic sign or else any driver on a preferential roadway would have to stop and observe an approaching driver to make sure that driver did not ignore the traffic sign or signal, which would have been an unreasonable result. *Id.* The court also held that the defendant's negligence was the sole cause of the collision. *Id.*

¶ 73 The most obvious point of distinction in this case is the fact that there was not a traffic sign or signal. While plaintiff had the right of way, she also had an obligation to keep a proper lookout and to avoid a collision if possible. *Id.* Here, plaintiff testified that she observed defendant's white back-up lights before the collision. Plaintiff also testified that she was traveling at a slow rate of speed and was able to stop at the point of the impact, so her observation of the back-up lights gives rise to a reasonable inference that she also should have been able to observe defendant beginning to back out of his parking spot. The controversy over the point of impact also plays into the resolution of the facts surrounding the collision; the fact that it occurred much further forward on plaintiff's car than indicated by her or her son's

testimony suggests that she did not credit the significance of her observation of defendant's back-up lights as she was proceeding along the parking aisle. It also lends credibility to defendant's account of the collision, including the fact that he claimed to have idled out of his parking spot instead of abruptly and quickly proceeding to back up. Thus, while *Salo* offers some insight regarding plaintiff's and defendant's respective obligations, it is distinguishable because the parking lot was not controlled by a traffic sign or signal at the point of the collision.

¶ 74 Plaintiff also likens this case to *Janisco v. Kozloski*, 261 Ill. App. 3d 963, 965-66 (1994), in which, according to plaintiff, the appellate court "reject[ed the] defendant's argument that a collision could have been avoided by [the] plaintiff simply because [the defendant] did not see the plaintiff's car until the moment of collision." *Janisco*, however, involved the determination of liability, not the apportionment of fault after liability had been determined. The case did not involve a claim that the plaintiff had been contributorily negligent. Thus, it is wholly distinguishable.

¶ 75 Finally, plaintiff argues that the jury ignored her testimony that indicated that she was not negligent. We do not believe that the jury ignored any evidence plaintiff elicited; rather the evidence elicited throughout the trial was not nearly as one-sided as plaintiff suggests. There is ample evidence from which to determine that plaintiff was contributorily negligent, but "clearly not more than 50 percent," and this is precisely what the jury determined. Thus, plaintiff's reliance on *Watson v. South Shore Nursing & Rehabilitation Center, LLC*, 2012 IL App (1st) 103730, ¶ 39 (a jury cannot disregard unrebutted testimony), is inapposite. Accordingly, we reject plaintiff's arguments and hold that the jury's apportionment of fault is not subject to the entry of judgment *n.o.v.*

¶ 76 B. Photographic Evidence of the Aftermath of the Collision

¶ 77 Plaintiff argues that the photographs of the vehicles illustrating the physical damage were erroneously admitted and were entirely irrelevant to the issues raised in this case. A trial court's determination about admissible evidence is reviewed under the abuse-of-discretion standard, and this includes its decisions on motions *in limine* and whether to admit photographic evidence. *Baraniak v. Kurby*, 371 Ill. App. 3d 310, 316-17 (2007). Evidence is relevant if the evidence tends to make a fact in controversy more or less probable that it would have been without the evidence. *Id.* at 317.

¶ 78 Plaintiff argues that the photographs were irrelevant and were admitted to allow defendant to imply that plaintiff's injuries were correlated with the physical damage resulting from the collision. We disagree.

¶ 79 The photos were admitted during defendant's direct examination. They illustrated the point of impact, a contested issue that bore on the issues of how the accident occurred, the credibility of all of the occurrence witnesses, and the apportionment of fault and contributory negligence. Thus, we believe that they were properly admitted, as they were relevant to these issues.

¶ 80 Plaintiff argues that the admission of the photos allowed defendant to make an end-around the trial court's ruling of how the photos could be used and for what issues the photos would be relevant, and make an implied argument that plaintiff's injuries were correlated to the damage evidenced in the photos. We disagree. Defendant did not make any such argument; also, the examination was limited to how the accident occurred, and where upon the vehicles were the points of impact. There was no argument, the jury was not instructed that it could do anything but determine the facts and follow the law given to it, and plaintiff points to nothing in the record to suggest that the jury used the photos for any purpose other than to determine the facts of the collision. Accordingly, we reject plaintiff's argument.

¶ 81 Plaintiff cites *Peach v. McGovern*, 2017 IL App (5th) 160264, *appeal allowed*, No. 123156 (Mar. 21, 2018), and *Baraniak* for the proposition that, without expert testimony to correlate the physical damage depicted in photographic evidence of a rear-end collision to the injuries experienced by the plaintiff, the photographs are irrelevant and prejudicial. In *Peach*, the defendant made the express argument that, based on the damage depicted in the photographic evidence of the post-collision vehicles, the plaintiff was exaggerating his injuries. *Peach*, 2017 IL App (5th) 160264, ¶ 19. Here, defendant made no similar argument or even insinuation. Further, the photographic evidence was relevant to the issues of how the accident occurred, witness credibility, and apportionment of fault. Thus, *Peach* is distinguishable.

¶ 82 Likewise, in *Baraniak*, the defendant tangentially addressed the issue of the impact of the collision and whether the plaintiff's injuries could have reasonably resulted from that impact even though there was no expert testimony to link the physical damage of the vehicles depicted in the photographic evidence with the extent of the plaintiff's injuries. *Baraniak*, 371 Ill. App. 3d at 317. Here, there was no argument, express or implied, linking plaintiff's injuries to the physical damage. Moreover, the photos were relevant to the issues of how the accident occurred, witness credibility, and apportionment of fault. *Baraniak* is therefore distinguishable. Accordingly, we reject plaintiff's contention that the trial court abused its discretion in admitting the photos of the damage to the parties' vehicles following the collision.

¶ 83 C. Golf

¶ 84 Plaintiff argues that all of defendant's questioning and commenting about her golfing activities following the collision were irrelevant and prejudicial because they invited the jury to speculate that plaintiff's golfing activities actually caused her rotator cuff and shoulder injuries even though, according to plaintiff, all of the evidence elicited from all of the witnesses indicated that golf was completely unrelated to her shoulder issues. We disagree.

¶ 85 As an initial matter, relevant evidence "means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Further, relevant evidence is admissible, while evidence which is not relevant is not admissible. Ill. R. Evid. 402 (eff. Jan. 1, 2011). We review a trial court's evidentiary rulings (*e.g.*, regarding admissibility or relevancy) for an abuse of discretion. *Peach*, 2017 IL App (5th) 160264, ¶ 13. In addition, we may affirm the trial court's judgment on any basis supported in the record. *Hoffman v. Northeast Illinois Regional Commuter R.R. Corp.*, 2017 IL App (1st) 170537, ¶ 42.

¶ 86 Here, it is true that neither Bennett nor Nuber believed that golf was harmful to plaintiff or had any bearing on plaintiff's shoulder complaints, but Player testified that plaintiff's daily activities were the likely cause of her rotator cuff injury, especially given her shoulder's Bigliani type 2 morphology. Thus, plaintiff's golfing habits were relevant to Player's opinions and testimony. Additionally, plaintiff's golfing habits were relevant to plaintiff's claim of loss of a normal life due to her injury. Plaintiff testified that golf was a central passion in her life, along with gardening and cooking. Defendant was entitled to explore plaintiff's ability to play golf despite her shoulder injury.

¶ 87 Plaintiff points specifically to defendant's improper comment in response to her objection as to the relevancy of his examination about plaintiff's golfing activities in the days following the collision as illustrative of defendant's improper purpose in posing the questions. As defendant cross-examined plaintiff about golfing following the collision, plaintiff objected to the relevancy of defendant's inquiries. Defendant commented on the objection in the presence of the jury, "She is going for medical care interweaved with strenuous physical activity." At the sidebar, defendant conceded that the comment was uncalled for and the trial court admonished

defendant to refrain from commentary on pending objections. The trial court overruled plaintiff's objection.

¶ 88 Plaintiff argues that the only purpose of the questioning was to plant the speculative seed in the jury's mind that, rather than the collision, it was plaintiff's continued golfing activities that actually caused her shoulder issues. While defendant's comment before the jury is troubling, we cannot say it was prejudicial. It was an isolated comment that was not repeated. Moreover, the line of questioning was relevant for the reasons discussed above, so the objection was properly overruled. Accordingly, we do not believe that the speaking response to plaintiff's objection caused prejudice in this case.

¶ 89 Plaintiff also argues that defendant's improper purpose is seen in his objectionable questioning of Player, in which he asked if golf were the sole cause of plaintiff's shoulder issues. While plaintiff did not properly object to that question, plaintiff's objection to the next question was sustained, the question and any answer were stricken and the jury was instructed to disregard the question and any answer. The questioning concerning plaintiff's golfing habits was proper and relevant, so defendant's purpose cannot be deemed to be improper. In addition, to the extent the point was not forfeited by objecting to the following question, the jury is presumed to follow the trial court's instructions (*McHale v. W.D. Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 40), so the trial court's instructions cured any potential prejudice. *Id.*

¶ 90 Plaintiff also points to a comment during defendant's closing argument that plaintiff was not believable because "[s]he just suffered what she'd like you to believe was a traumatic accident and she goes out and golfs the following day." Plaintiff did not object, thereby forfeiting this contention on appeal. *Steele v. Provena Hospitals*, 2013 IL App (3d) 110374, ¶ 43. Forfeiture aside, the argument is legitimate based on Player's testimony that the collision resulted in only strained muscles and no shoulder issues; even though plaintiff represented that it

was a substantial collision resulting in significant shoulder issues, she was able to continue golfing as soon as the next day. Player testified that, based on the fact that plaintiff did not have any rotator cuff pain at the July 31 examination by Bennett, the collision did not result in injury or aggravation of her shoulder. Defendant's argument is a reasonable inference based on the testimony summarized. Accordingly, we reject plaintiff's argument.

¶ 91 Plaintiff's remaining contentions center on the assertion that there was no connection between golf and plaintiff's shoulder injury demonstrated at trial. This is belied by the evidence. As noted above, Player testified that the shoulder injury was not evident at the July 31 examination leading him to opine that it was caused by the activities of plaintiff's daily living, age, aging, and the like. Golf was apparently one of plaintiff's paramount activities, and defendant was entitled, as discussed above, to explore her golfing habits. Accordingly, we reject plaintiff's remaining contentions.

¶ 92 D. Player's Opinions

¶ 93 Plaintiff argues that Player's opinions about the causation of plaintiff's shoulder injury were improperly admitted into evidence. Expert testimony is admissible if the expert is qualified by knowledge, skill, experience, training, or education, and the testimony will assist the jury in understanding the evidence. Ill. R. Evid. 702 (eff. Jan. 1, 2011); *Caldwell v. Advocate Condell Medical Center*, 2017 IL App (2d) 160456, ¶ 52. The proponent of the expert testimony must lay an adequate foundation that establishes the reliability of the information on which the expert is basing his or her opinion. *Id.* The expert's opinion will be deemed too speculative to be reliable if the basis of the opinion includes so many varying or uncertain factors that the expert is required to guess to reach his or her opinion. *Id.* Once an adequate foundation has been laid, the jury alone decides the appropriate weight to assign to the expert's opinion. *Id.* Finally, the

admission of expert testimony is within the trial court's sound discretion, and its ruling will not be disturbed absent an abuse of that discretion. *Id.*

¶ 94 Player opined that plaintiff's rotator cuff injury was not caused by the collision. Instead, he opined that it was caused by activities of daily living, the aging process, activities involving raising her upper arm above horizontal in light of the particular morphology of plaintiff's shoulder, as well as considering her medical history and the symptoms and complaints she exhibited following the collision. Player testified that daily activities and aging were competent causes of the rotator cuff injury that required Nuber's corrective surgery. Plaintiff argues that Player's "opinion lacked a proper foundation and was pure speculation." We disagree.

¶ 95 Player testified that he held all of his opinions to a reasonable degree of medical certainty. Player also based his opinions as to the mechanism of injury on the morphology of plaintiff's shoulder, namely, the Bigliani type 2 acromion, which he explained was a downward sloping instead of flat bone in the shoulder commonly associated with the type of partial-thickness rotator cuff tear that plaintiff experienced. Player also specifically noted that, in Bennett's records of the July 31 visit, plaintiff was complaining only of periscapular pain, meaning only the muscles around her shoulder blade were giving her pain following the collision. This view was confirmed, in Player's opinion, by the fact that the empty can test, which was devised to determine whether a patient was experiencing rotator cuff pain, produced negative (no pain) results. Player interpreted the negative result to mean that plaintiff remained asymptomatic following the collision, despite the fact that, in the 2009 MRI and confirmed in the 2013 MRI, she had the precise partial-thickness rotator cuff tear that Nuber addressed in the March 2014 surgery. Finally, Player testified that daily activities and motions could cause the tendons in the shoulder to rub and that this could cause both the injury and the symptomatology experienced by plaintiff. Player clearly set forth the bases of his opinion and the method he

employed to reach his opinion. We hold that the trial court did not abuse its discretion in admitting Player's opinion testimony regarding how plaintiff's shoulder became symptomatic of a rotator cuff injury following the collision.

¶ 96 Plaintiff argues that Player did not properly rely on her medical records, because they did not show that daily activities, aging, or repetitive motions caused the rotator cuff injury that Nuber addressed by surgery. However, we note that plaintiff's medical record did support Player's opinion that, after the accident, she had only strained muscles around her shoulder blade based on Bennett's diagnosis of periscapular dysfunction and his prescription of physical therapy designed to alleviate that precise condition. From this (and the negative empty can test), Player concluded that, upon Bennett's September release of plaintiff from his care, plaintiff remained asymptomatic for her rotator cuff injury despite it being in evidence in the 2009 and 2013 MRIs, because plaintiff made no more complaints of pain at that time. According to plaintiff's medical records, it was only in March 2014, when she consulted with Nuber, that she began complaining of rotator cuff pain to a physician. Player therefore used plaintiff's medical records and the information therein to conclude first that she remained asymptomatic for her rotator cuff injury following the collision and while under Bennett's care, and then to conclude that, sometime in the intervening months, plaintiff developed the pain symptomatic of the rotator cuff injury that Nuber addressed in the March 2014 surgery. Player further explained that, in light of the particular morphology of her shoulder, namely the Bigliani type 2 acromion conformation, she was susceptible to developing a rotator cuff injury as she aged simply by performing daily activities and activities that caused her to raise her upper arm above horizontal. Based on this ample evidence apparent in the record, we reject plaintiff's contention.

¶ 97 Plaintiff relies on *Yanello v. Park Family Dental*, 2017 IL App (3d) 140926, ¶¶ 44-45, for the proposition that it is reversible error to allow an expert witness to offer opinions for which an

insufficient foundation has been presented. In that case, the defendants' expert testified, based upon a stray mention of rheumatoid arthritis in a few medical records and the fact that plaintiff had some bone density loss in her forearm, that the plaintiff had rheumatoid arthritis and sufficient bone density loss in her upper jaw to explain the failure of dental implants provided by the defendants. The appellate court held this to be error, because the plaintiff had never actually been diagnosed with rheumatoid arthritis and the defendants' expert was not qualified to make such a diagnosis; likewise, there was no evidence that the plaintiff had been diagnosed with bone density loss in her upper jaw. Additionally, there were no records, expert opinion testimony, or other evidence besides the defendants' expert's conclusory opinion, that rheumatoid arthritis and bone density loss could have caused the bone loss seen in the plaintiff's upper jaw. *Id.* ¶ 45. The appellate court concluded that the defendants' expert had not presented a sufficient foundation, and his opinion, that rheumatoid arthritis plus diagnosed bone density loss from the forearm could have caused the failure of the dental implants, should have been excluded. *Id.*

¶ 98 Here, there was ample evidence providing a foundation for Player's opinions. Plaintiff's MRI records, according to Player, showed that she had a partial-thickness rotator cuff tear in 2009, and that it was virtually identical in the 2013 MRI. Plaintiff's complaints following the collision demonstrated that her rotator cuff injury remained asymptomatic, and plaintiff's complaints in March 2014, when she consulted with Nuber, demonstrated that her rotator cuff injury had become symptomatic. Player opined that, based on this information, the shoulder issue was not caused by the collision, and he opined as to common causes of the injury observed in plaintiff. Moreover, Player testified about plaintiff's shoulder morphology and its relation to the injury she experienced. Thus, unlike *Yanello*, there was a foundation provided for Player's opinions and Player was qualified to interpret the medical information and make his opinion; thus, defendant's reliance on *Yanello* is misplaced.

¶ 99 Plaintiff argues that she was prejudiced by the errors. As we have determined that Player's opinions were not erroneously admitted, there can be no error accruing from them. Accordingly, we do not need to further address plaintiff's contentions.

¶ 100 III. CONCLUSION

¶ 101 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 102 Affirmed.