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2018 IL App (3d) 160632-U

Order filed July 19, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

DINA HARTMAN and PATRICK HARTMAN,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois
Plaintiffs-Appellants,	)	
RICHARD C. ANDERSON, M.D., and PEORIA SURGICAL GROUP, LTD,	)	Appeal No. 3-16-0632 Circuit No. 08-L-108
Defendants-Appellees.	)	Honorable Stephen A. Kouri Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion in its evidentiary rulings and did not err in allowing evidence of plaintiff's informed consent and any error in closing arguments was harmless and did not prejudice plaintiff.

¶ 2 Plaintiffs Dina and Patrick Hartman brought this medical malpractice action against defendants Richard Anderson, M.D. and Peoria Surgical Group, Ltd. (collectively Anderson) for

injuries Dina alleged she sustained as a result of Anderson's negligence. Following a jury trial, the jury found in favor of Anderson and against the Hartmans. We affirm.

¶ 3 FACTS

¶ 4 Defendant Richard Anderson, part of defendant Peoria Surgical Group, Ltd. (PSG), removed plaintiff Dina Hartman's gallbladder and repaired a hernia during an April 12, 2006, outpatient surgery. Hartman was discharged from outpatient services the same day but later went to the emergency room because she was experiencing abdominal pain. Jay Woodland, M.D., a medical resident, directed her care under Anderson's supervision. Anderson performed a second surgery on Hartman on April 14, 2006, where he discovered and repaired two holes in Hartman's bowel. Hartman continued to experience medical issues and underwent exploratory surgery at the Cleveland Clinic in 2009. The surgeon there diagnosed her with short bowel syndrome, a condition which does not allow the body to process food properly, resulting in malnutrition and continual diarrhea. Hartman eventually had to have a colostomy and a feeding tube inserted.

¶ 5 Hartman and her husband, plaintiff Patrick Hartman, filed this medical malpractice action in April 2008 against Anderson and PSG, alleging negligence and loss of consortium. Attached to the complaint were the section 2-622 reports of Alan Londe, M.D., in which he evaluated the conduct of both Anderson and Woodland. Londe concluded that Anderson was negligent in a number of ways, which injured Hartman, and that Woodland was also negligent and caused or contributed to Dina's injuries. Hartman filed a first amended complaint, adding allegations of negligence against OSF St. Francis and Woodland, which were later dismissed without prejudice on Hartman's motion.

¶ 6 A trial took place and the trial court granted a mistrial on October 30, 2012, based on Hartman's violation of a motion *in limine* preventing any mention that Anderson took a family

vacation the weekend following the second surgery he performed on Hartman. A second trial took place. The court's previous pretrial rulings were accepted and included in the second trial, including the motion *in limine* barring mention of Anderson's vacation.

¶ 7 Londe testified as the first witness for Hartman. He was a general and cosmetic surgeon and an assistant instructor in clinical surgery at Washington University of St. Louis Medical School. In his opinion, Anderson's failure to diagnose a bowel perforation during the hernia surgery and the delay until the second surgery led to the necessity of a more complex repair. Londe pointed out several discrepancies in Anderson's surgical notes. He stated that certain findings of an obstruction or kink in the bowel segments sent to the pathologist did not correspond with Anderson's surgical notes that he "ran" the bowel, which would result in an obstruction or kink-less segment. Similarly, the discharge notes indicated he removed Hartman's appendix but subsequent records revealed it was not removed. Londe pointed out as another discrepancy that Anderson's descriptions in the operative report regarding old adhesions did not correspond with findings made by the pathologist, who found acute, but not chronic, adhesions in the bowel segments sent to him.

¶ 8 Londe opined that Hartman had only 220 centimeters of small bowel remaining after the surgeries performed by Anderson. In his opinion, Anderson breached the standard of care by failing to diagnose and repair the tears in the small bowel in the first surgery and in delaying the second surgery. Sepsis started as a result of the delay in operating and Hartman developed a bowel obstruction secondary to peritonitis.

¶ 9 On cross-examination, Londe admitted that he did not know if the standard of care for Woodland was the same as for Anderson. He also admitted that he had the same criticisms of Woodland as he did of Anderson because Woodland was under Anderson's supervision. He did

not think Woodland directly caused Hartman's injuries. Londe acknowledged that he had previously concluded in his section 2-622 report that Woodland was negligent and that he opined that Woodland "caused or contributed to" Hartman's injuries.

¶ 10 Ronald Winek, M.D., a pathologist, testified that he examined the specimens from Hartman's surgery. They did not include the appendix. One section of the bowel specimens was kinked because of a new adhesion, which caused an obstruction. The adhesion was acute. There was no evidence of surface tearing, contrary to Anderson's surgical record. There was no evidence of damage from Hartman's prior radiation therapy. His diagnosis was peritonitis with bowel kinking as a secondary cause.

¶ 11 Sanjay Sundar, M.D., testified that his practice was anesthesia and pain management. He treated Hartman for pain. He ultimately inserted a pain pump to help her manage the pain.

¶ 12 Timothy Lawless, testified he was a family practitioner, who had been treating Hartman since 2004. He did not believe that Hartman's symptoms were related to her prior radiation. She suffered from irritable bowel syndrome prior to 2006.

¶ 13 James Church, M.D. testified that he was a gastrointestinal surgeon at the Cleveland Clinic. He performed a colonoscopy and surgery on Hartman and performed a colostomy in 2009. He observed dense adhesions in her colon and pelvis and evidence of radiation damage to the lining of her colon and rectum. He did not find any obstruction in her small bowel. Bowel obstructions are a side effect of the type of radiation treatment Hartman received for her cervical cancer. Radiation damage can worsen over the years and can caused the bowel to become weak. He measured her small bowel at 220 centimeters, which would expand to a measurement of 300 centimeters when relaxed. A normal bowel is approximately 460 centimeters. He diagnosed Hartman with short bowel syndrome.

¶ 14 Jana Reed, A.P.N. testified. She was an advanced practice surgery nurse, who previously worked for Anderson and other PSG doctors. She first saw Hartman in the hospital on the morning of April 14, 2006, at Anderson's request. He had concerns about Hartman's abdominal cavity. She examined Hartman along with Woodland. Hartman had an elevated heart rate, decreased urine output and elevated white blood count, all of which indicated an infection. She did not chart that Hartman had a tender belly. She communicated her concerns to Anderson. They started Hartman on antibiotics in case there was an infection and admitted Hartman to the intensive care unit (ICU). Reed opined that sepsis started on April 12, and that by the morning of April 14, Hartman was "massively septic." Reed drafted the surgical discharge summary for Anderson. She assumed Anderson had performed an appendectomy.

¶ 15 Nancy Di Donato, R.N., a case manager and life care planner, testified as to a life care plan she developed for Hartman. She projected total costs for Hartman's lifetime care to exceed $10 million.

¶ 16 Patrick Hartman testified. His wife's condition worsened after she returned to the hospital after the first surgery and by Friday morning, she was "profusely" throwing up bile. She was taken into emergency surgery and then remained in the ICU for several days. At some point, he learned from Gupta, Anderson's partner, that the repairs Anderson made were leaking. He understood they were leaking for up to three days and Hartman's infection was worsening. Gupta told him some mistakes had been made but Patrick's focus should be on care for his wife. He walked in on a conversation with Gupta and another surgeon and overheard Gupta saying Hartman was too infected for an additional surgery. Hartman remained in the hospital to drain the infection. After 18 days, the infection cleared and Dina was released from the hospital. She started experiencing diarrhea in the hospital and it continued at home to where she would spend

16 to 20 hours a day in the bathroom. She also experienced pain, cramping and bloating. He took his wife to the Mayo Clinic, where she participated in a pain management program. The pain did not improve and exploratory surgery was recommended.

¶ 17 He and Dina went to see James Church, M.D., at the Cleveland Clinic, who diagnosed Hartman with short bowel syndrome. Church performed a colostomy, which relieved Hartman's rectal pain but not her abdominal pain. She had an episode on Christmas 2012, where she became obstructed and threw up fecal matter. Her health continued to decline and included weight loss. Patrick brought her back to the Cleveland Clinic, where Church inserted a total parenteral nutrition (TPN) line, which resulted in improvement for Hartman.

¶ 18 Hartman testified. Before 2006, her health was generally good. She had a hysterectomy in 1995 and underwent radiation treatment prior to that for cervical cancer. She had to be aware that the cancer might return in her vagina or colon so she was sensitive to things like diarrhea. From 1995 to 2006, she mentioned diarrhea about four times to a doctor but never missed any work because of it. She must have presented wrongly to the doctors because she never had diarrhea "every time" she ate or "all the time" as her medical records indicated. She saw Anderson for treatment for her gallbladder. After her return home from the first surgery, she did not recall much except screaming in pain and returning to the hospital. After the second surgery, she learned about the leaks from Gupta. She had diarrhea at that time. She lost weight. She was vomiting her own stool when she went to the hospital on Christmas 2012. In mid-2013, a TPN was inserted, which had been a blessing. She continued with Anderson to treat her diarrhea and asked him what happened to her. He said he nicked her intestine and apologized. She testified to her medical bills, earnings history and the effect her medical issues have had on herself and her family.

¶ 19 On cross-examination, she agreed that October 1997 medical records reflected that she reported that she had experienced cramps, bloating, weight gain, constipation, diarrhea and pain during bowel movements since her radiation treatment. She did not recall that she called her primary care doctor in August 2000 and told him of stomach cramping and diarrhea almost every time she ate. She disagreed with his report. Around 2000, she would have "a few cramps and a little bit of loose stools" if she ate a lot or certain foods. A May 2002 office note from her primary care doctor indicated that she reported bloating and gas and the need for an immediate bowel movement after eating, happening at least three to four times per day, and that stress also caused the symptoms. Hartman reported the condition had been ongoing for five years, according to her doctor's notes. She denied she had depression, contrary to her history charted at the Cleveland Clinic which indicated she had depression since her cancer. She took Prozac prior to 2006 for a phobia of storms.

¶ 20 Brandon Hartman, Dina and Patrick's son, also testified. He was about to start his junior year at Bradley University. His mom's condition after 2006 affected her ability to participate in family activities in which she had previously been actively involved. He also described that his dad was stressed and worried about Dina and suffered from panic attacks.

¶ 21 Deborah Patterson testified. She was Hartman's sister and a certified nuclear medicine technologist. She testified to the changes in Hartman since the first surgery. John Mayerhoff, a family friend, testified to the change in Hartman's life as a result of the surgery. Christa DeWalt, a pharmacist at Kroger, testified that she worked and was friends with Hartman, who had been the pharmacy technician. She observed Hartman's condition and the pain she experienced because of it.

¶ 22 Woodland testified. In 2006, he was a second-year medical resident practicing in Peoria, with privileges at OSF St. Francis. At the time of trial, he was a general surgeon. He treated Hartman on April 12, 2006, in the emergency room. Her vitals were within normal limits. He charted that she had abdominal pain which was most likely secondary to the sutures from the hernia repair earlier that day. The pain worsened with movement and was localized to the area of the sutures. He did an abdominal exam which showed no guarding or rebound. An ultrasound was performed by the ER staff, which showed there was no fluid collection in her abdomen. Blood tests revealed nothing out of the ordinary for a postoperative patient. There were no signs of an infection. He admitted her to the hospital.

¶ 23 Keith Millikan, M.D., a general surgeon, testified. He reviewed Hartman's records and stated that Hartman had symptoms consistent with irritable bowel syndrome dating back to 1997. Bowel perforation is a known risk where surgery includes removing adhesions. Between 50% to 60% of bowel injuries are not detected during surgery. Hartman did not exhibit any signs of a bowel leak or peritonitis when she was discharged after the gallbladder surgery and when she returned to the hospital. When her condition changed on April 14, Anderson ordered the appropriate tests. Millikan concluded that Hartman was injured during the April 12 surgery due to severe adhesions and the comorbidities of radiation treatment, which likely weakened her bowel, and a history of irritable bowel syndrome and cervical cancer. In addition, Hartman was obese and a smoker. He questioned Church's conclusion regarding the measurement of the small bowel. In his opinion, Anderson met the standard of care in both surgeries and Hartman's postsurgical complications were not due to negligence by Anderson.

¶ 24 Herand Abcarian, M.D., a colorectal surgeon, testified that bowel length was not subject to precise measurement because it contracts when manipulated. He described Londe's testimony

about bowel length as inaccurate and Church's measurements as imprecise. In his opinion, Hartman's issues were due to radiation damage.

¶ 25 Anderson testified he first saw Hartman on April 4, 2016, in the emergency room where she presented with abdominal pain, vomiting and diarrhea. The ER diagnosis was gallstones. His preoperative evaluation noted Hartman's history of cervical cancer treatment, including radiation therapy, which predisposed Hartman to abdominal adhesions. She also had a history of irritable or inflammatory bowel disease, with a diagnosis as early as 1986. He further determined that not all Hartman's symptoms could be explained as gallbladder issues. A computerized axial tomography (CAT or CT) on April 7, 2006, revealed a hernia in Hartman's abdominal wall which was partially obstructing her bowel and could cause her symptoms. On April 12, 2016, he performed outpatient surgery on Hartman, reducing the hernia and removing the gallbladder. He noticed dense adhesions in her abdominal cavity. He saw no bile leak, bleeding or bowel injury before finishing the surgery and no indication of bowel injury or peritonitis prior to her discharge after the surgery.

¶ 26 When Hartman presented to the ER, she showed no signs of bowel perforation or peritonitis. An x-ray and ultrasound did not indicate a perforation or abdominal leak. Her vital signs and lab tests were consistent with an inflammatory response to surgery. Similarly, her vital signs and abdominal examination during morning rounds on April 13 did not indicate peritonitis, nor did a second set of lab tests. Anderson's evening examination of Hartman on April 13 indicated she was feeling better and her pain had decreased. There were no signs of peritonitis or bowel perforation. Her heart rate began to increase shortly after 1 a.m. on April 14. The nursing staff did not relay the change in Hartman's condition until sometime between 7:30 and 9 a.m. By then, Hartman had a low-grade fever, increased heart rate and abdominal tenderness. He ordered

a CT scan and repeated labs. The results suggested an infection or inflammatory process and he immediately performed exploratory surgery.

¶ 27 Anderson performed the second surgery the afternoon of April 14. The surgery revealed two small holes in Hartman's bowel and drainage into her pelvis. He stitched up the holes. Anderson observed new and old adhesions. He cut away all the adhesions and scar tissue in the bowel. He believed his treatment of Hartman met the standard of care. In his opinion, the injury to Hartman's small bowel resulted from the preexisting weakness in her bowel as a result of the radiation treatment. Performing the second surgery earlier would not have changed the outcome. He did not remove five to ten feet of Hartman's small bowel.

¶ 28 During cross-examination, Hartman's counsel brought up Anderson's interrogatory answers. The defense sought a sidebar because the interrogatories included a question about Anderson's family vacation, barred by a motion *in limine* and mention of which had caused a mistrial in the first trial. Plaintiff's counsel projected the interrogatory answer about the vacation to the jury. The trial court stopped the line of questioning, told the jury that the parties had disagreed about showing a portion of the answers, that the court determined not to show the interrogatory answers, and that the jury should disregard the line of questioning related to the interrogatories.

¶ 29 Donald Kirby, M.D., a gastroenterologist who began treating Hartman at the Cleveland Clinic in February 2009, testified that a condition from radiation can cause side effects more than 20 years after treatment, including making the tissue very thin and friable. Other side effects included diarrhea, nausea, vomiting and bowel obstructions. Julius Bonello, M.D., a general and colorectal surgeon saw Hartman a couple weeks after the surgeries. He testified that diarrhea will result once a bowel is damaged by radiation at a maximum level. Hartman's condition was

aggravated by her diet. Gupta testified. He was a surgeon involved with Hartman after mid-April 2006. He did not tell anyone that mistakes were made during the surgery.

¶ 30 A jury instruction conference took place and the parties debated the sole proximate cause instructions. The defense argued that evidence indicated that the sole proximate cause of Hartman's injuries was the nurses' failure to inform Anderson of the changes in Hartman's condition beginning the early hours of April 14 or Woodman's conduct. The court determined there was some evidence of a delay and of Woodman's conduct that supported use of the long forms of jury instructions.

¶ 31 During Hartman's closing argument, counsel argued the burden of proof, stating, "If you find that Dr. Anderson was more probably true than not negligent, then you must find for the Hartmans period," that "the law absolutely requires that you return a verdict" for the Hartmans, that "you can have doubts" and the Hartmans needed to only prove "a little bit." During Anderson's closing, defense counsel argued that uncertainty did not equate to meeting the burden of proof. Hartman objected, and in response to Hartman's objection, the court advised the jury that although both sides would argue the law, the court would instruct the jury on the law with the jury instructions.

¶ 32 Following deliberations, the jury returned a verdict in favor of Anderson and against the Hartmans. The Hartmans filed a posttrial motion, which was heard and denied. They timely appealed.

¶ 33 ANALYSIS

¶ 34 The Hartmans raise a number of issues on appeal. They allege the trial court erred when it allowed causation evidence regarding sole proximate cause, ordered the jury to disregard Anderson's testimony because of a motion *in limine* violation, allowed Londe's section 2-622

report as impeachment evidence, permitted Anderson to introduce informed consent forms, and allowed Anderson's closing argument comments regarding the burden of proof.

¶ 35 We begin with Hartman's challenge to the trial court's evidentiary rulings. She argues the trial court erred in allowing causation evidence of sole proximate cause, ordering the jury to disregard Anderson's testimony in response to Hartman's violation of the motion *in limine* bar, and in allowing Londe's section 2-622 report about Woodland as impeachment evidence. Hartman submits the trial court's evidentiary errors regarding the admission of evidence and jury instruction regarding sole proximate cause entitle her to a new trial.

¶ 36 The "empty chair" or sole proximate cause defense seeks to establish that another who was not named as a defendant was the sole proximate cause of the plaintiff's injuries. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 92 (1995). A defendant may rebut evidence that shows his acts are negligent and proximately caused the plaintiff's injuries and has the right to demonstrate that the conduct of a third person or other factor was the sole proximate cause of the plaintiff's injuries. *Id.* at 101. A defendant's answer denying his conduct caused the plaintiff's injury allows the defendant to present evidence that the injury resulted from another cause. *Id.* at 94 (citing *Simpson v. Johnson*, 45 Ill. App. 3d 789, 795 (1977)).

¶ 37 The parties are entitled to have the jury clearly and fairly instructed on each theory supported by the evidence. *Nassar v. County of Cook*, 333 Ill. App. 3d 289, 297 (2002). The test is "whether the instructions, taken as a whole, were sufficiently clear so as not to mislead and whether they fairly and correctly stated the law." *Ellig v. Delnor Community Hospital*, 237 Ill. App. 3d 396, 408 (1992). The sole proximate cause instruction should be given where there is some evidence, even if slight and unpersuasive, that tends to show the conduct of another, not the defendant, was the sole proximate cause of the plaintiff's injury. *Ready v. United/Goedecke*

Services, Inc., 238 Ill. 2d 582, 591 (2010). Where there is no evidence that the sole proximate cause is another person's conduct or condition, the sole proximate cause instruction should not be given. *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 134 (1997). This court reviews a trial court's evidentiary rulings for an abuse of discretion. *Simmons v. Garces*, 198 Ill. 2d 541, 567-68 (2002).

¶ 38 The two-issue rule instructs that where there are more than one issue or defenses raised and no special interrogatory was presented, a presumption arises that the jury found in favor of the defendant on every defense and never reached the causation issue. *Strino v. Premier Healthcare Associates, P.C.*, 365 Ill. App. 3d 895, 904 (2006) (citing *H.E. Culbertson Co. v. Warden*, 123 Ohio St. 297, 303 (1931)). Where a jury offers a general verdict and more than one theory was presented, if there was sufficient evidence to sustain any theory presented and the party failed to request a special interrogatory, the party cannot later complain about the verdict. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 492 (2002) (citing *Witherell v. Weimer*, 118 Ill. 2d 321, 329 (1987). With a general verdict, a reviewing court cannot find reversible error as there is no means to test the verdict. *Jones v. Beck*, 2014 IL App (1st) 131124, ¶ 32. A general verdict is silent about the jury's reasoning for the verdict. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 101 (2010).

¶ 39 The jury submitted a general verdict. Hartman did not submit special interrogatories regarding the verdict. The general verdict precludes this court from determining whether any error in the instructions affected the verdict. The evidentiary issues Hartman raises only become pertinent if the jury determined that Anderson was negligent. We presume that the jury found in Anderson's favor on both negligence and causation because it returned a general verdict. Hartman does not argue the verdict was against the manifest weight of the evidence. We find the

evidence supported a verdict that Anderson was not negligent and that the jury did not reach the issue of causation. As such, Hartman cannot demonstrate prejudice as a result of the sole proximate cause defense and instructions.

¶ 40 Moreover, we do not consider that the trial court erred when it gave the sole proximate cause instruction. The threshold to give the instruction is whether there was some evidence to support it. At trial, Anderson argued, albeit briefly, that the delay in informing Anderson about the change in Hartman's condition in the early morning hours of April 14, was the sole cause of her injuries. In addition, Hartman's expert, Londe, opined in his section 2-622 report that Woodland caused or contributed to Hartman's injuries. We find there was some evidence to justify giving the long form instruction regarding sole proximate cause.

¶ 41 The second evidentiary issue is whether the court erred in ordering the jury to disregard a portion of Anderson's testimony in response to Hartman's violation of the motion *in limine* bar. Hartman argues that the trial court's error in cutting off counsel's questioning of Anderson regarding prior inconsistent statements she maintains he made prevented her from introducing relevant evidence and prejudiced her.

¶ 42 A trial court has inherent authority to control its courtroom and may sanction a party for failure to comply with its orders. *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 65. A motion *in limine* allows a party to obtain an order excluding evidence in advance, thus protecting it from any prejudice that could arise from the impact of having the questions asked and objecting to them. *Cunningham v. Millers General Insurance Co.*, 227 Ill. App. 3d 201, 205 (1992). When a trial court sustains an objection and instructs the jury to disregard the improper testimony, any prejudicial impact of the error is cured. *First National Bank of LaGrange v. Glen*

Oaks Hospital & Medical Center, 357 Ill. App. 3d 828, 839 (2005). This court reviews a trial court's evidentiary rulings for an abuse of discretion. *Simmons*, 198 Ill. 2d at 567-68.

¶ 43 Despite an *in limine* ruling barring disclosure that Anderson took a family vacation after the second surgery, its prior violation causing a mistrial and repeated discussions on the prohibition, including one immediately preceding the violation at issue, the Hartmans' counsel projected the barred information to the jury, presumably in an attempt to display the next interrogatory answer. On the defense's objection, the trial court admonished the Hartmans' counsel to stop the line of questioning. It ordered the jury to disregard the barred information and the line of questioning relating to the interrogatory answers shown. The Hartmans' counsel was aware of the "family vacation" bar and the implications of violating it. He insists the disclosure was inadvertent, but regardless of the motivation, counsel displayed information that was barred in order to protect Anderson from being subjected to speculation regarding a connection between his vacation and Hartman's injuries. The implications arising from the fact Anderson left on vacation following the surgery could prejudice him. We find the trial court did not abuse its discretion in prohibiting and instructing the jury to disregarding the barred evidence that was wrongly presented.

¶ 44 The third issue is whether the court erred when it allowed as impeachment evidence Londe's section 2-622 report regarding Woodland. Hartman argues by allowing use of the report, the trial court improperly also allowed evidence regarding Woodland, a dismissed party. According to Hartman, the trial court violated its own *in limine* order that excluded evidence Woodland had been a party, the affidavit was not materially inconsistent with Londe's testimony, and prejudice to Hartman outweighed any probative value.

¶ 45 It is appropriate to test a witness's credibility by demonstrating that on prior occasions the witness made statements inconsistent with his trial testimony. *Iaccino v. Anderson*, 406 Ill. App. 3d 397, 402 (2010). The prior statement must be materially inconsistent to be used for impeachment. *Id*. Where a section 2-622 report is inconsistent with a medical expert's trial testimony, it may be used to impeach him as a prior inconsistent statement. *Id*. at 404. This court reviews a trial court's evidentiary rulings for an abuse of discretion. *Simmons*, 198 Ill. 2d at 567-68.

¶ 46 Contrary to the Hartmans' claims, the use of Londe's section 2-622 report did not introduce evidence that Woodland was a dismissed defendant. There was no mention of his previous status as a defendant. At the time Londe authored his report, Woodland was not a defendant. He was added as a defendant after the report was issued and was later dismissed. There was no error regarding Woodland's prior status as a defendant. Similarly, the court did not err when it allowed Anderson to impeach Londe with his report. Londe's testimony was materially inconsistent with his section 2-622 report. In the report, he stated that Woodland's negligence caused or contributed to Hartman's injuries. At trial, he did not attribute any negligence to Woodland. He testified he assumed that because Anderson supervised Woodland, Woodland's conduct would be negligent akin to Anderson's conduct but admitted he was not aware of the standard of care for Woodland. He also admitted he attributed negligence to Woodland in his report but stated he withdrew the conclusion when he learned Woodland was a resident.

¶ 47 Next, we consider whether the trial court erred when it permitted Anderson to introduce the informed consent forms Hartman signed prior to surgery. Hartman argues the trial court improperly allowed defense counsel to cross-examine her regarding the consent forms and

discussions she had regarding those forms. She submits the evidence was irrelevant and prejudiced her.

¶ 48 Generally, evidence regarding informed consent is not admissible unless the plaintiff has alleged a claim for lack of informed consent. See *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 52. An informed consent form may be admissible for a purpose other than to establish consent or lack of it. *Hamrock v. Henry*, 222 Ill. App. 3d 487, 494 (1991). " 'Evidence which is competent for one purpose does not become incompetent because the jury might improperly consider it in some other capacity for which it could not properly be admitted.' " *Id.* at 494 (quoting *Eizerman v. Behn*, 9 Ill. App. 2d 263, 279-80 (1956)). This court reviews a trial court's evidentiary rulings for an abuse of discretion. *Simmons*, 198 Ill. 2d at 567-68.

¶ 49 Hartman opened the door to admission of the evidence regarding informed consent. She testified that Anderson never consulted with or informed her that he was going to repair her hernia during the gallbladder surgery. The defense used the informed consent form during cross-examination to negate her denial that Anderson discussed a hernia repair with her prior to the first surgery. Anderson offered the informed consent form Hartman signed to impeach that testimony and establish that the discussion took place. He did not present the form to establish her informed consent but to oppose her denial that she was aware of the hernia repair prior to surgery. Use of the form had probative value on the issue of Hartman's knowledge of the surgery and as evidence of prior inconsistent statements. We find that use of the informed consent form was not improper as it was relevant for a purpose other than to prove consent.

¶ 50 The final issue is whether the trial court erred in allowing the State's closing argument comments regarding the burden of proof. Hartman maintains defense counsel misstated the law regarding the burden of proof in closing arguments.

¶ 51 It is the trial court's function to instruct the jury regarding the law but attorneys must state what they believe the law to be and base their factual arguments on it. *Stennis v. Rekkas*, 233 Ill. App. 3d 813, 829 (1992). Counsel may not mislead the jury when stating the law. *Id.* However, a single improper comment or two will generally not deprive a party of a fair trial. *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 42 (2009). A court's admonishment to the jury that it would instruct it as to the law served to cure any prejudice resulting from the court's failure to order the jury to disregard an improper comment in closing. *Stennis*, 233 Ill. App. 3d at 831. Reversal is only required where improper comments made during closing argument substantially prejudiced the opposing party. *Ramirez v. City of Chicago*, 318 Ill. App. 3d 18, 26 (2000). In determining whether improper comments prejudiced a party, the court looks at the trial as a whole. *Cates v. Kinnard*, 255 Ill. App. 3d 952, 956 (1994). This court reviews a trial court's evidentiary rulings for an abuse of discretion. *Simmons*, 198 Ill. 2d at 567-68.

¶ 52 Hartman argued in closing argument that "if you find Doctor Anderson was more probably true than not negligent, then you must find for the Hartmans period. It doesn't require you to know. It doesn't require you to be sure. More probably true than not. You can have doubts." Counsel further argued that Hartman needed to only prove "a little bit" and that "the law absolutely requires that you return a verdict" for the Hartmans if the jury found Anderson negligent on either of the two issues. In response, defense counsel argued in closing arguments, "I would propose to you, ladies and gentlemen, that if there's uncertainty in your mind, that means the burden of proof has not been met." Hartman objected and the trial court stated it would instruct the jury on the law. Defense counsel then stated, "So I would propose to you that if you get to the other end and you have uncertainty, that in itself proves that the burden was not met, and your verdict should be for Doctor Anderson."

¶ 53 Anderson’s comments suggesting that uncertainty was the burden of proof were improper. The civil burden of proof is more probably true than not true. See Illinois Pattern Jury Instructions, Civil, No. 21.01 (2016). On Joseph and Hattie’s objection, the trial court informed the jury that the court would instruct it as to the law and did so with the jury instruction, including defining the proper burden of proof. Contrary to Joseph and Hattie’s claims, the court was not required to immediately correct the statement nor do the isolated statements, in light of the entire trial, rise to the level of reversible error. The record does not suggest the jury failed to follow the court's directions regarding the burden of proof. Any prejudice was cured by the trial court’s instructions to the jury. We find the comments, which were made in response to Joseph and Hattie’s closing argument, did not deprive them of a fair trial.

¶ 54 CONCLUSION

¶ 55 For the foregoing reasons, the judgment of the circuit court of Peoria Count is affirmed.

¶ 56 Affirmed.