2019 IL App (2d) 180561-U
No. 2-18-0561
Order filed May 3, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BENNIE L. WILLIAMS III, Administrator of the Estate of Karen S. Williams, Plaintiff-Appellant, v. DAVE ERNEST, in his capacity as Sheriff of Boone County, Defendant-Appellee.	)	Appeal from the Circuit Court of Winnebago County. No. 14-L-303 Honorable J. Edward Prochaska Judge, Presiding

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Birkett and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment entered upon a jury verdict in favor of the defendant was affirmed; each of plaintiff's arguments was either (1) forfeited, (2) barred by the invited-error doctrine, or (3) not subject to appellate review, given that the argument related solely to damages and the jury returned a general verdict in favor of the defendant on the issue of liability.

¶ 2 Plaintiff, Bennie L. Williams III, is the administrator of the estate of Karen S. Williams, who died from injuries that she sustained in a car accident in August 2014. Plaintiff appeals a judgment entered in the circuit court of Winnebago County on a jury verdict in favor of the

Sheriff of Boone County (the Sheriff).[1] For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 We will provide a brief overview of the case here and then supplement the facts in the analysis section as necessary to address plaintiff's specific claims of error.

¶ 5 On August 20, 2014, Bryant Locke, DeAngelo Brooks, and Ronaldo Fort committed an armed robbery of a cellular phone store in Boone County. Locke drove his accomplices away from the scene of the robbery in a white Pontiac Grand Am headed toward Winnebago County. Upon hearing a call from his dispatch center, deputy Robert Rosenkranz of the Boone County Sheriff's Department proceeded at a high rate of speed toward the general area where he believed the perpetrators were headed. Rosenkranz noticed a white Grand Am near the county line, and he attempted to initiate a traffic stop. Instead of stopping, the Grand Am sped away. Rosenkranz pursued the Grand Am into Winnebago County at speeds well in excess of the posted speed limit. With Rosenkranz still in pursuit, the Grand Am eventually ran a red light and struck a vehicle being driven by Ms. Williams. When the Grand Am came to rest following the collision, Fort, holding a gun, climbed over Locke and exited the driver's-side window. Fort's weapon discharged, and Rosenkranz returned fire. Meanwhile, Brooks exited the other side of the Gran Am and attempted to flee on foot. Locke, Brooks, and Fort were each charged with various crimes in the circuit courts of Boone and Winnebago Counties arising out of their actions that day. They each pleaded guilty to certain offenses and were sentenced to prison. Tragically, Ms. Williams never regained consciousness after the collision and died on August 27, 2014.

[1] In the fifth amended complaint, plaintiff named the former Sheriff of Boone County, Duane E. Wirth, as the defendant. By statute, the present Sheriff should be substituted for his predecessor. See 735 ILCS 5/2-1008(d) (West 2016).

¶ 6 Plaintiff, who is Ms. Williams' brother, commenced this action in October 2014. In his fifth amended complaint, which was filed in the middle of trial, plaintiff advanced a single count alleging a wrongful death claim against the Sheriff. Plaintiff alleged that the Sheriff was vicariously liable for Rosenkranz's reckless and willful and wanton conduct in (1) engaging in the pursuit, (2) failing to terminate the pursuit, and (3) failing to keep a proper lookout for vehicles and pedestrians. In addition to raising certain affirmative defenses, the Sheriff filed a third-party complaint for contribution against Locke, Brooks, and Fort. (This was originally styled as a counterclaim for contribution, but it was treated as a third-party complaint after plaintiff non-suited his own claims against Locke, Brooks, and Fort shortly before trial.) Locke, Brooks, and Fort were defaulted in connection with the Sheriff's third-party complaint.

¶ 7 The matter proceeded to trial in November 2017. The jury returned a general verdict in favor of the Sheriff. The court denied plaintiff's posttrial motion, and he timely appealed.

¶ 8 II. ANALYSIS

¶ 9 Plaintiff raises five issues.[2] He argues that the court erred in (1) allowing evidence of Locke's, Brooks', and Fort's criminal convictions arising out of their actions on August 20, 2014; (2) allowing testimony about post-accident events; (3) barring expert opinion testimony

[2] Plaintiff includes two additional matters in the "issues presented for review" section of his brief, but he does not develop any argument on those points ((1) "Whether the trial court erred in denying the plaintiff's posttrial motion" and (2) "Whether the trial court erred in allowing hearsay statements of Fort and Locke in that [*sic*] did not refer to their state of mind during the police pursuit"). Accordingly, those issues are forfeited. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12 ("Mere contentions, without argument or citation to authority, do not merit consideration on appeal.").

regarding Ms. Williams' conscious pain and suffering; (4) barring evidence of Rosenkranz's history of police pursuits; and (5) restricting plaintiff's use at trial of Boone County's vehicle pursuit policy.

¶ 10 A. Criminal Convictions

¶ 11 Plaintiff challenges on relevance grounds the court's decision to allow certain of Locke's, Brooks', and Fort's criminal convictions into evidence (plaintiff concedes that Locke's conviction of second-degree murder (720 ILCS 5/9-2(a) (West 2014)) in connection with Ms. Williams' death was relevant). Relying on *McMath v. Katholi*, 304 Ill. App. 3d 369 (1999), *rev'd on other grounds*, *McMath v. Katholi*, 191 Ill. 2d 251 (2000), and *Spyrka v. County of Cook*, 366 Ill. App. 3d 156 (2006), plaintiff maintains that the two paragraphs of his motion *in limine* that were directed toward the convictions were effectively motions to bar evidence. Therefore, he argues, once the court denied those motions, he was not required to reassert his objections at trial to preserve the issue for appeal.

¶ 12 The Sheriff responds, *inter alia*, that plaintiff failed to preserve his arguments. In his reply brief, plaintiff contends that, even were that the case, the issue is reviewable pursuant to the plain-error doctrine.

¶ 13 We hold that plaintiff failed to preserve his arguments for appeal. Paragraphs 30 and 31 of plaintiff's motion *in limine* sought to bar any reference to the various offenses for which Locke, Brooks, and Fort were convicted in connection with their actions on August 20, 2014. The court denied those motions more than three weeks before trial began. Plaintiff did not reassert his objections when the Sheriff introduced evidence of those convictions at trial.

¶ 14 As our supreme court has explained:

> "The denial of a motion *in limine* does not in itself preserve an objection to disputed evidence that is introduced later at trial. 'When a motion *in limine* is denied, a contemporaneous objection to the evidence at the time it is offered is required to preserve the issue for review.' " *Simmons v. Garces*, 198 Ill. 2d 541, 569 (2002) (quoting *Brown v. Baker*, 284 Ill. App. 3d 401, 406 (1996)).

Plaintiff's reliance on *Spyrka* and the appellate court opinion in *McMath* is misplaced. Both of those cases involved evidentiary objections that were raised and litigated during trial. *McMath*, 304 Ill. App. 3d at 376; *Spyrka*, 366 Ill. App. 3d at 165-66. Critically, the motions in those cases were not true motions *in limine*. See *McMath*, 304 Ill. App. 3d at 376 (a motion *in limine* "is by definition a *pretrial* motion" (emphasis in original)). Unlike in *McMath* and *Spyrka*, plaintiff raised his objections to the evidence of the convictions in a true motion *in limine*, which the court denied more than three weeks before trial. Under these circumstances, plaintiff forfeited his objections to the evidence by failing to raise the issue at trial.[3]

¶ 15 Plaintiff nevertheless asks us to review the matter for plain error under the "*Belfield* exception." See *Belfield v. Coop*, 8 Ill. 2d 293, 313 (1956) ("If prejudicial arguments are made without objection of counsel or interference of the trial court to the extent that the parties litigant [*sic*] cannot receive a fair trial and the judicial process stand without deterioration, then upon review this court may consider such assignments of error, even though no objection was made and no ruling made or preserved thereon."). "[T]he use of this doctrine in civil cases is 'exceedingly rare.' " *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 8 (2007) (quoting

[3] We note that *Spyrka* has been criticized for being "not well reasoned." See *Guski v. Raja*, 409 Ill. App. 3d 686, 696 (2011). Given, however, that *Spyrka* involved a procedural posture that was very different from the case at bar, we need not comment further on this point.

Jones v. Rallos, 373 Ill. App. 3d 439, 454 (2006)). Indeed, we must strictly apply the forfeiture doctrine "unless the prejudicial error involves flagrant misconduct or behavior so inflammatory that the jury verdict is a product of biased passion, rather than an impartial consideration of the evidence." *Gillespie v. Chrysler Motors Corp.*, 135 Ill. 2d 363, 375-76 (1990). In other words, the prejudicial error must be "so egregious that it deprived the complaining party of a fair trial *and* substantially impaired the integrity of the judicial process itself." (Emphasis in original.) *Gillespie*, 135 Ill. 2d at 377. Examples of situations where it might be appropriate to apply the *Belfield* exception include trials involving "blatant mischaracterizations of fact, character assassination, or base appeals to emotion and prejudice." *Gillespie*, 135 Ill. 2d at 377. Plaintiff fails to articulate how he suffered prejudice from the purported error in admitting the evidence of the third-party defendants' convictions. He also makes no meaningful argument that the purported error requires reversal under the *Belfield* standard. Accordingly, we will not review the merits of this unpreserved issue.

¶ 16 B. Post-Accident Events

¶ 17 Plaintiff next argues that the court erred in allowing testimony of post-accident events—presumably, Fort's exchange of gunshots with Rosenkranz and Brooks' flight on foot—as those facts were irrelevant to the issues involved in the trial.

¶ 18 Plaintiff's entire argument on this point consists of five sentences, without citation of authority. The argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (appellant's brief must contain argument supported by authority); *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12 (a conclusory two-paragraph argument that lacked citations to pertinent authority was deemed forfeited). Even so, as the Sheriff notes, plaintiff's counsel questioned Rosenkranz at trial regarding the exchange of gunshots after the collision. A party

will not be heard to complain that evidence was improperly admitted when he himself solicited testimony on that same topic. *Simmons*, 198 Ill. 2d at 569.

¶ 19 C. Conscious Pain and Suffering

¶ 20 Plaintiff's third argument is that the court erred in barring expert opinion testimony regarding Ms. Williams' conscious pain and suffering. According to plaintiff, even though his counsel initially indicated that he had no objection to deeming certain facts admitted—including that Ms. Williams "did not experience any pain and suffering as a result of the accident"—plaintiff should have been allowed to present a claim of pain and suffering to the jury based on certain answers that one of Ms. Williams' treating physicians gave in an evidence deposition.

¶ 21 We need not detain ourselves long with this argument. "Generally, errors at trial relating solely to damages will not be considered on appeal where it is evident that the jury, having found in favor of the defendant as to liability, never reached the question of damages." *McDonnell v. McPartlin*, 192 Ill. 2d 505, 531 (2000). The jury here returned a general verdict in favor of the Sheriff and accordingly did not reach the question of damages. The purported error goes solely to the issue of damages, and we need not consider it. See *Frulla v. Hyatt Corp.*, 2018 IL App (1st) 172329, ¶ 30 (declining to consider numerous of the plaintiff's arguments regarding evidentiary errors pertaining to damages where the jury found in favor of the defendant on the issue of liability).

¶ 22 D. Rosenkranz's History of Pursuits

¶ 23 Plaintiff also argues that the court erred in barring evidence of Rosenkranz's history of police pursuits. Plaintiff cannot complain of this alleged error, as his counsel indicated before trial that he had no objection to the Sheriff's motions *in limine* 3, 7, and portions of 11, all of which sought to exclude this evidence. " 'It is fundamental to our adversarial process that a

party waives his right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding.' " *McMath*, 191 Ill. 2d at 255 (quoting *Auton v. Logan Landfill, Inc.*, 105 Ill. 2d 537, 543 (1984)). It would be manifestly unfair to allow plaintiff to obtain a new trial based on an alleged error that he injected into the proceedings by agreeing to exclude this evidence. See *McMath*, 191 Ill. 2d at 255.

¶ 24 E. Pursuit Policy

¶ 25 For his final argument, plaintiff contends that the court "erred in barring the Boone County Sherriff Department's Vehicle Pursuit Policy as evidence of whether and to what extent, if any, Deputy Rosenkranz was willful and wanton before and at the time of the occurrence." In response to this argument, the Sheriff chronicles how the parties' positions on this issue became manifest over the course of various court proceedings before and during trial. The Sheriff argues, *inter alia*, that the only restrictions that were ultimately placed on plaintiff's use of the pursuit policy were ones to which his counsel expressly agreed.

¶ 26 The record supports the Sheriff's argument. It seems that plaintiff directs his criticism specifically toward the court's decision to grant the Sheriff's motion *in limine* 18. However, to understand the court's rulings with respect to the pursuit policy, it is necessary to mention not just the Sheriff's motion *in limine* 18, but also the discussions that took place in connection with the Sheriff's motion *in limine* 17 and the jury instruction conference.

¶ 27 In his 17th motion *in limine*, the Sheriff asked the court to bar plaintiff from "introducing any evidence of any nature" concerning the pursuit policy. According to the Sheriff, cases such as *Morton v. City of Chicago*, 286 Ill. App. 3d 444 (1997), and *Wade v. City of Chicago*, 364 Ill. App. 3d 773 (2006), established that police policies do not create legal duties and that a violation of those policies "does not constitute evidence of negligence or willful and wanton conduct."

Rosenkranz's legal duty was instead created, the Sheriff proposed, by statute, specifically, section 11-205 of the Illinois Vehicle Code. See 625 ILCS 5/11-205 (West 2016). In the alternative, again relying on *Morton* and *Wade*, the Sheriff asked in his 18th motion *in limine* to bar any claim that a violation of the pursuit policy was evidence of willful and wanton conduct.

¶ 28 The Sheriff presented his motions *in limine* 17 and 18 to the court on November 21, 2017. Plaintiff's counsel conceded on multiple occasions that case law prohibited him from arguing that Rosenkranz was reckless or willful and wanton for violating certain tenets of the pursuit policy. Nevertheless, with respect to the Sheriff's motion *in limine* 17, plaintiff's counsel argued that the policy was admissible to show Rosenkranz's state of mind on the day of the pursuit. Plaintiff's counsel told the court that he agreed with the premise of the Sheriff's motion *in limine* 18—*i.e.*, that "if the policy is admissible, no violation of that policy should be claim [*sic*] to evidence willful and wanton conduct." The court took the Sheriff's motion *in limine* 17 under advisement and conditionally granted the Sheriff's motion *in limine* 18, saying: "If I allow [the policy] in then [plaintiff is] not gonna argue that any violations of the policy constitutes willful and wanton conduct."

¶ 29 On November 27, 2017, the court revisited those motions. The court ruled that it would allow evidence of the pursuit policy "to let the jury at least know what it is." When the Sheriff's counsel raised concerns about the possibility of the policy misleading the jury, plaintiff's counsel again assured the court that he would not argue that a violation of the policy was "per se evidence of an utter indifference or conscious disregard for the safety of others." He asserted, however, that if the evidence showed that there were deviations from the pursuit policy, he should be allowed to argue about that. At that point, the court ruled as follows:

> "[I] actually think I'm going to grant 18 then because, I think, we're on the same page. I'm going to allow in evidence of the Boone County policy and but [*sic*] bar anyone from arguing that any violation of the Boone County Policy is evidence of willful and wanton misconduct.
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> ***
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> Any violation of the policy goes to Deputy Rosenkranz's thoughts and actions that's what's really relevant in this case. So I would agree there's no—it can be no argument that any violation of the policy equals reckless conduct—
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> ***
>
> —and that's what 18 goes to."

¶ 30 During trial, both parties questioned Rosenkranz and his supervisor, sergeant Edward Krieger, about the pursuit policy. At plaintiff's request, the court admitted the policy into evidence, over the Sheriff's objection.

¶ 31 At the jury instruction conference, the Sheriff proposed a non-I.P.I. instruction regarding the pursuit policy: "A failure to follow the Boone County Pursuit Policy is not evidence of willful and wanton conduct." Plaintiff's counsel objected that this instruction could confuse the jury, given that a different instruction already set out the standard of care that applied to Rosenkranz. Plaintiff's counsel further emphasized that plaintiff had "not once argued that a failure to follow their policy is evidence of willful and wanton conduct." Nevertheless, if the court was considering giving the Sheriff's instruction, plaintiff's counsel proposed that the instruction should be modified to read: "A failure to follow the Boone County pursuit policy *in and of itself* is not evidence of willful and wanton conduct *per se*." (Plaintiff's additions italicized.) The court accepted the addition of the words "in and of itself" to the instruction, but

ruled that it would not use the Latin phrase "*per se*," as the jury would not know what it meant. Plaintiff's counsel said "[t]hat's fine." Consistent with the discussion between the parties and the court, the instruction that was ultimately read to the jury stated: "A failure to follow the Boone County Pursuit Policy in and of itself is not evidence of willful and wanton conduct."

¶ 32 " '[A] party waives his right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding.' " *McMath*, 191 Ill. 2d at 255 (quoting *Auton*, 105 Ill. 2d at 543). To that end, "[a] party cannot complain of error which he induced the court to make or to which he consented." *McMath*, 191 Ill. 2d at 255. As the foregoing recitation of facts makes clear, to the extent that there was any error with respect to the restrictions that the court placed on plaintiff's ability to use the pursuit policy as evidence of willful and wanton conduct, plaintiff induced that error and consented to it.

¶ 33 Plaintiff's counsel repeatedly told the court that he had no disagreement with opposing counsel's understanding of the holdings in *Morton* and *Wade*, except to the extent that opposing counsel was attempting to exclude evidence of the pursuit policy entirely. Plaintiff's counsel took the position that the policy was admissible to show Rosenkranz's state of mind on the day of the pursuit. The court agreed with plaintiff's counsel's position and allowed the policy into evidence on that ground. Plaintiff's counsel also repeatedly assured the court that he had no intention of arguing that Rosenkranz's deviations from the policy meant that he acted in a willful and wanton manner. All of this stands in marked contrast to plaintiff's argument on appeal—that *Morton* and other more recent case law hold that violations of internal policies may constitute some evidence of willful and wanton conduct. Moreover, although plaintiff criticizes the court for granting the Sheriff's motion *in limine* 18, plaintiff fails to mention that his own counsel told

the court that he agreed with that motion. Indeed, one of the reasons the court granted that motion was that, after extensive discussions, everyone was "on the same page."

¶ 34 Plaintiff complains that the court's ruling on the Sheriff's motion *in limine* 18 "effectively[] prohibited the plaintiff from requesting an I.P.I. 60.01 instruction." Plaintiff even includes such a hypothetical instruction in his brief. When it came time for the instruction conference, however, plaintiff did not submit an alternate instruction to the one that the Sheriff proposed. See Ill. S. Ct. R. 366(b)(2)(i) (eff. Feb. 1, 1994) ("No party may raise on appeal the failure to give an instruction unless the party shall have tendered it."). Once again, instead of challenging the Sheriff's interpretation of the case law that provided the basis for the instruction that the Sheriff tendered (*Morton* and *Wade*), plaintiff's counsel merely argued that the instruction was unnecessary, given that the standard of care was defined in another instruction. Plaintiff's counsel also proposed adding language to that instruction, and the court acquiesced to that request.

¶ 35 Under these circumstances, plaintiff cannot be heard to complain that the court improperly restricted his use of the pursuit policy at trial.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 38 Affirmed.