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2019 IL App (4th) 170936-U

NO. 4-17-0936

FILED
January 4, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CONSUELO DELGADO ORTEGA,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
EDWARD KOLB, M.D. and ORTHOPEDIC &	)	No. 11L115
SPORTS MEDICINE CENTER, S.C.,	)	
Defendants-Appellees.	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) defendant's and Dr. Fernandez's testimony did not violate Illinois Supreme Court Rule 213; (2) defendant's closing argument was not improper or prejudicial; and (3) the trial court did not abuse its discretion when it barred undisclosed opinion testimony.

¶ 2 In June 2011, plaintiff, Consuelo Delgado Ortega, filed a medical malpractice action against defendants, Edward Kolb, M.D., an orthopedist, and Orthopedic & Sports Medicine Center, S.C. Plaintiff alleged defendant—during her left-hand carpal tunnel release surgery—deviated from the standard of care by injuring her median nerve. In May 2017, a jury found in favor of defendants and against plaintiff.

¶ 3 Plaintiff appeals, arguing (1) the trial court deprived plaintiff of a fair trial when defendant and Dr. John J. Fernandez testified to opinions not previously disclosed; (2) defense counsel's closing argument was improper and prejudicial; and (3) the trial court abused its

discretion in barring Dr. Steven Grindel from testifying to the absence of a neuroma on plaintiff's right wrist. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2011, plaintiff filed a medical malpractice action against defendants stemming from a March 2008 procedure performed by defendant. In May 2017, the matter proceeded to a jury trial. We summarize only the evidence necessary to resolve this appeal.

¶ 6 A. Plaintiff's Injuries and Occurrence

¶ 7 In November 2007, plaintiff came to defendant with wrist and hand pain. After examining plaintiff's records and electromyography (EMG) report, defendant determined plaintiff had bilateral severe carpal tunnel syndrome and recommended carpal tunnel release surgery on both hands, starting with the left hand. Defendant next saw plaintiff in early March 2008. According to defendant, plaintiff exhibited numbness and tingling in the radial three fingers of both hands, but at her second appointment, she complained of worsening of her symptoms. Prior to surgery, defendant informed plaintiff of the risks and benefits of the surgery, specifically that some patients do not see improvement of symptoms.

¶ 8 On March 26, 2008, defendant operated on plaintiff's left hand. Defendant testified he used a surgical scalpel blade No. 11 to make the incision and that he generally starts on the palm of the hand and works his way toward the wrist crease. He cut to the underlying tissue below the skin and then opened the incision so he could see the site. Under the ligament is the median nerve and under that are tendons. The goal of the surgery is to cut and release the ligament to take pressure off the median nerve and reduce the symptoms.

¶ 9 Defendant placed a Freer elevator—a shield-like device used to protect the median nerve—under the ligament but above the median nerve before he cut the ligament.

Defendant testified he visualized the median nerve and that it was where it belonged. In his report of operation, written immediately after the procedure, defendant stated he took care to avoid injury to the nearby median nerve. According to defendant, there was no evidence of any kind of lesion within the surgical field. Specifically, he did not see a neuroma—an area of disorganized nerve tissue—or anything of concern involving the median nerve in the surgical field.

¶ 10 After surgery, plaintiff continued to complain of burning pain, numbness, and cold, shooting pain in her middle finger. Defendant determined severe compression of plaintiff's median nerve over time could be the cause of the pain. Defendant performed a second surgery to release the compression. In July 2008, defendant referred plaintiff to Dr. Fernandez, an orthopedist who specializes in hand surgery.

¶ 11 Dr. Fernandez first saw plaintiff in July 2008. Dr. Fernandez initially provided noninvasive treatment, but ultimately performed surgery on December 15, 2008. During surgery, Dr. Fernandez opened and extended the incision defendant made during surgery. Dr. Fernandez found adhesions along plaintiff's median nerve, which corresponded with the pain and sensitivity in plaintiff's middle finger. Dr. Fernandez also found a neuroma and resected it into a part of the normal nerve. Aside from defendant, Dr. Fernandez was the only care provider to look directly at plaintiff's median nerve, and he observed no outward sign of a median nerve injury.

¶ 12 In June 2011, plaintiff filed a lawsuit against defendants alleging that during the first surgery, defendant injured her median nerve and his conduct deviated from the standard of care.

¶ 13 B. Pretrial Issues

¶ 14 1. *Discovery Depositions*

¶ 15 On April 12, 2012, defendant sat for a discovery deposition. He testified he had not reviewed the operative report of Dr. Fernandez and did not have an opinion to a reasonable degree of medical certainty as to the cause of plaintiff's preoperative and postoperative symptoms at the time Dr. Fernandez operated on plaintiff. However, defendant testified he had no reason to believe Dr. Fernandez's findings were iatrogenic in nature. Defendant relied on the history, both before and after surgery, of plaintiff's (1) carpal tunnel presentation, (2) various neurovascular findings and changes in findings, and (3) improvement in her EMG findings. Based on his report of operation, defendant testified he discussed the risks and potential complications of carpal tunnel release surgery with plaintiff prior to her surgery.

¶ 16 On December 7, 2012, Dr. Fernandez sat for a discovery deposition. He testified that he had no way of knowing the cause of plaintiff's neuroma. However, he stated that a neuroma can form after a perfect carpal tunnel release surgery or after repetitive activity like the factory work plaintiff performed. Dr. Fernandez testified that when he operated on plaintiff he did see significant scar tissue, but he observed no direct injury to plaintiff's median nerve.

¶ 17 Following surgery by Dr. Fernandez, plaintiff's pain "significantly improved" but she still had sensitivity and numbness affecting her middle finger and the radial half of her ring finger. Dr. Fernandez opined that some patients' symptoms worsen after carpal tunnel release surgery and subsequent resection surgeries. Dr. Fernandez also testified adhesions form even after a properly performed surgery and patients can have hypersensitivity, numbness, pain, and tingling simply from the surgery.

¶ 18 Concerning the standard of care, Dr. Fernandez testified a physician performing a carpal tunnel release surgery can meet the standard of care and nonetheless a median nerve

injury can occur as part of the procedure. Dr. Fernandez stated he was not expressing an opinion on whether a departure from the standard of care by defendant led to plaintiff's hand pain. He went on to state that nothing in defendant's operative note indicated defendant performed plaintiff's carpal tunnel release surgery in an inappropriate fashion or failed to meet the applicable standard of care.

¶ 19 2. *Rule 213 Disclosures*

¶ 20 On March 4, 2016, defendants filed Rule 213 disclosures. Ill. S. Ct. R. 213(f)(2), (3) (eff. Jan. 1, 2018). The disclosures stated defendant would testify to the following:

¶ 21 "It is believed that [defendant] will testify consistent with his discovery deposition and his medical records in this matter. Further, it is anticipated that [defendant] will testify that his care and treatment was appropriate and met the applicable standards of care in all of its aspects; that his surgeries were performed well within the standards of care. He appropriately worked the patient up prior to the surgeries he performed for her. The indications for the surgeries were clearly documented and appropriate.

It is further anticipated that [defendant] will testify that the use of the #11 blade in this manner was appropriate. There was no evidence of injury to the flexor tendon at the time of his surgeries. He appropriately used a Freer elevator to perform the carpal tunnel release procedure. Trigger finger post carpal tunnel syndrome is common and can present itself within a few weeks post-operatively. Worsening of the patient's condition can occur with

carpal tunnel release. This is especially so in patients who, like [plaintiff], had a significant carpal tunnel syndrome prior to the time she presented herself for care and treatment by [defendant].

There was no evidence at the time of [plaintiff]'s surgery that there had been a direct injury to the nerve as a result of any surgeries performed by [defendant].

Carpal tunnel syndrome is a compression of the nerve which essentially is the same as a crush injury. Burning and tingling do not always improve post carpal tunnel release. This is especially true in a patient who has severe carpal tunnel syndrome, like [plaintiff] had, prior to her presentation to [defendant] for care and treatment. Long-term compression of the nerve will negatively affect the outcome of a carpal tunnel release. The longer the compression to the nerve, the worse the likely outcome will be even after a surgical release.

He clearly warned the patient that she would not obtain a full and complete relief from the numbness and tingling of her carpal tunnel surgery[*sic*] prior to the carpal tunnel release he performed. [Plaintiff]'s problems today are a result of severe compression of the nerve in the carpal tunnel and not because of any surgeries performed by [defendant]. Her problems are not related to any adhesions from surgeries performed by [defendant].

> *** If the patient continues to have nerve pain, it is likely due to severe nerve compression she experienced prior to the time she saw [defendant].
>
> * * *
>
> Prior to [defendant]'s first surgery, this patient had severe bilateral carpal tunnel syndrome. It was severe on both the right and left per EMG studies preoperatively. Patients with severe carpal tunnel syndrome, like the plaintiff had prior to [defendant]'s surgeries, already have severe nerve damage.
>
> A neuroma-appearing lesion or psuedoneuroma is a nerve change without true neural elements. There was no obligation to perform a biopsy of this lesion. There is no evidence the median nerve was ever severed or directly injured. There was no evidence the psuedoneurma was caused by [defendant]'s surgery. Pseudoneuromas can occur with carpal tunnel syndrome without a breach in the standard of care.
>
> [Defendant] will describe the lack of disability this patient has."

¶ 22 As for Dr. Fernandez, his 213 disclosures were almost identical to defendant's disclosures; however, plaintiff moved to strike Dr. Fernandez's disclosures asserting Dr. Fernandez's disclosures went beyond the testimony he gave at his discovery deposition. The trial court struck Dr. Fernandez's disclosures with the exception of the first sentence. Thus, the court

limited Dr. Fernandez to testifying "consistent with his discovery deposition and his medical records in this matter."

¶ 23 3. *Dr. Fernandez's Evidence Deposition*

¶ 24 On February 3, 2017, Dr. Fernandez sat for an evidence deposition. Dr. Fernandez testified in accordance with his discovery deposition. Specifically, Dr. Fernandez testified a significant minority of carpal tunnel release surgeries result in an improvement, while some patients' symptoms get worse. According to Dr. Fernandez, lack of improvement in symptoms after surgery does not mean the surgeon deviated from the standard of care. Dr. Fernandez also testified the length of time a patient experiences carpal tunnel problems correlates with the likelihood of postoperative symptoms. Also, some patients develop adhesions without direct injury to the median nerve. Dr. Fernandez testified plaintiff had adhesions along her median nerve but also stated the adhesions could have developed through repetitive motion. Dr. Fernandez found no evidence of a direct injury to plaintiff's median nerve.

¶ 25 On cross-examination, Dr. Fernandez stated he needed more encompassing information—all of plaintiff's medical records and office reports—in order to give an opinion on whether defendant complied with the standard of care during plaintiff's carpal tunnel release surgery. While Dr. Fernandez testified he did not know the exact cause of plaintiff's neuroma, he indicated there are instances where a neuroma develops simply because of severe compression related to carpal tunnel.

¶ 26 C. May 2017 Trial Proceedings

¶ 27 1. *Testimony*

¶ 28 a. Dr. Grindel

¶ 29 Dr. Grindel, a board-certified orthopedic surgeon specializing in hand and arm surgery, testified on plaintiff's behalf. Prior to Dr. Grindel taking the witness stand, defense counsel moved, by filing a motion *in limine*, to bar him from testifying to the absence of a neuroma on plaintiff's right wrist. Plaintiff sought to provide this testimony as support for the opinion that plaintiff did not develop the left-wrist neuroma due to long-standing carpal tunnel syndrome because, if that were the case, Dr. Fernandez should have found a neuroma on plaintiff's right wrist when he operated on the right wrist months later. Thus, plaintiff asserted the left-wrist neuroma resulted from defendant's negligence during her first surgery.

¶ 30 During Dr. Grindel's discovery deposition, he testified to being unaware of plaintiff's right-wrist surgery. The trial court found Dr. Grindel lacked an opinion regarding the right wrist and the absence of a neuroma at his discovery deposition. The court granted the motion *in limine* finding Dr. Grindel failed to disclose his right-wrist opinion prior to trial.

¶ 31 b. Defendant

¶ 32 During plaintiff's case-in-chief, defendant testified as an adverse witness. He testified that upon seeing plaintiff for the first time he diagnosed her with severe carpal tunnel syndrome based on her clinical exam and an EMG performed by her primary physician. Prior to surgery, plaintiff complained of pain in her middle finger in addition to numbness and tingling. Defendant testified that when he cares for a patient with carpal tunnel syndrome as severe as plaintiff's, prior to surgery, he discusses with the patient the fact that the patient may have persistent pain and potential worsening of symptoms.

¶ 33 Later, when testifying in his own defense, defendant testified he could not have cut plaintiff's median nerve because the Freer elevator would have been in place to protect the wrist crease. Defense counsel next asked defendant about plaintiff's middle finger issues.

Defendant began to discuss the EMG testing he reviewed. Plaintiff objected arguing defendant's opinions regarding EMGs were not previously disclosed. The trial court overruled the objection.

¶ 34 Defense counsel then asked defendant about plaintiff's nerve degeneration. Defendant responded:

> "The unique part of this EMG study is down here where it says, 'of the forearm segment may indicate the presence of retrograde motor nerve degeneration proximal to the carpal tunnel.'
>
> This is the most important information in my opinion in this whole case. What this tells us is that the median nerve proximal to the carpal tunnel, which is where this neuroma was located, was already breaking down. To get a neuroma, you need nerve breakdown. It can occur from lots of things, like we talked about, from chronic compression. The neuroma was right here in the wrist -- (pointing). And you can imagine -- you don't have to be a doctor to understand that the nerve is like a thick piece of spaghetti, and it's going through this tight carpal tunnel right here -- (pointing). When you're bending your wrist back and forth, especially in a patient who already has the tight carpal tunnel, with bad [c]arpal [t]unnel [s]yndrome, once the nerve is already broken down here -- (pointing) -- and you keep doing this -- (gesturing) -- the nerve is going to keep breaking down and get worse. So this was in October of 2007. She continued to live with it ***."

¶ 35 Plaintiff objected, stating this was the subject of a motion *in limine*. The trial court did not rule on the objection. Defendant then related the importance of the EMG study back to the nerve degeneration. Specifically, defendant stated:

> "So the importance is the EMG study already showed that there was some breakdown of that nerve, and if that breakdown is not addressed by releasing the carpal ligament, it can potentially get worse. The way you know it's getting worse is that the patient's going to have more pain, which she started having obviously on February 1st when she needed the Darvocet."

¶ 36 Defendant also testified about how nerve damage causes the development of a neuroma and that, in his opinion, the pain in plaintiff's middle finger stems from chronic compression on her median nerve. Defendant stated, "I think the neuroma was a result of the nerve trying to heal itself. I can't say with any certainty that her symptoms were directly related to that area of the neuroma." Plaintiff objected and asked to have the opinion stricken but the trial court overruled the objection. Defendant testified plaintiff's problems were not because of any surgeries he performed.

¶ 37 2. *Closing*

¶ 38 Before closing argument, the trial court admonished the jury to "remember that closing arguments are not considered evidence."

¶ 39 During closing argument, defendant focused on Dr. Fernandez's opinions that some patients have burning sensations after carpal tunnel surgery and some patients' symptoms get worse. Defense counsel stated Dr. Fernandez underscored that the care provided to plaintiff met the standard of care. Plaintiff objected and the trial court again admonished the jury stating,

"use your own recollection of the evidence that you have heard. If any statement made by a lawyer during final arguments is not based upon the evidence you have heard in this case, then you should disregard that statement. Again, what the lawyers say in final arguments is not evidence." Defendant also argued plaintiff never called any family members, previous supervisors, vocational professionals, or doctors to substantiate her claim she could not work. Plaintiff objected but the trial court overruled the objection.

¶ 40 In closing argument, defendant accused plaintiff of improperly relying on a letter containing double hearsay. Plaintiff's expert, Dr. Grindel relied on a letter in plaintiff's workers' compensation file, authored by another physician. In the letter, the physician stated he spoke with Dr. Fernandez who told him that he thought plaintiff's nerve had been lacerated during defendant's surgery. Plaintiff objected and the court sustained the objection. Defense counsel went on to describe the use of the letter as an act of desperation resorted to because plaintiff's expert "crashed and burned."

¶ 41 3. *Verdict*

¶ 42 Following deliberations, the jury returned a verdict in favor of defendants and against plaintiff.

¶ 43 This appeal followed.

¶ 44 II. ANALYSIS

¶ 45 On appeal, plaintiff argues (1) the trial court deprived her of a fair trial because defendant and Dr. Fernandez testified to opinions not previously disclosed; (2) defense counsel's closing argument was improper and prejudicial; and (3) the trial court abused its discretion when it barred Dr. Grindel from testifying to the absence of a neuroma on plaintiff's right wrist. We address these issues in turn.

¶ 46 A. Standard of Review

¶ 47 "The admission of evidence is within the sound discretion of the trial court and a reviewing court will not reverse the trial court unless that discretion was clearly abused." *Gill v. Foster*, 157 Ill. 2d 304, 312-13, 626 N.E.2d 190, 194 (1993). An abuse of discretion occurs when the court's ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would adopt the court's view. *TruServ Corp. v. Ernst & Young, LLP*, 376 Ill. App. 3d 218, 227, 876 N.E.2d 77, 86 (2007). "Jury verdicts should not be set aside and cause the expense of a new trial unless there has been a miscarriage of justice, caused by an error that prejudiced and affected the substantial rights of an innocent party." *Gersch v. Kelso-Burnett Co.*, 272 Ill. App. 3d 907, 908, 651 N.E.2d 569, 570 (1995).

¶ 48 B. Previously Disclosed Opinions

¶ 49 Illinois Supreme Court Rule 213 mandates, upon written interrogatory, a party must disclose the subject matter, opinions, conclusions, qualifications, and reports of any witnesses who will offer any opinion testimony prior to trial. *Kotvan v. Kirk*, 321 Ill. App. 3d 733, 745, 747 N.E.2d 1045, 1055 (2001); Ill. S. Ct. R. 213(f)(2), (3) (eff. Jan. 1, 2018). "Courts have consistently limited an expert's testimony to comments within the scope of and consistent with the facts and opinions disclosed in discovery." *Kotvan*, 321 Ill. App. 3d at 745. Plaintiff contends the trial court deprived her of a fair trial because defendant and Dr. Fernandez testified to opinions not previously disclosed in discovery.

¶ 50 1. *Defendant's Causation Opinions*

¶ 51 Plaintiff argues she was prejudiced when defendant—at trial—testified to new causation opinions in violation of Rule 213. Specifically, plaintiff asserts that prior to his case-in-chief, defendant never stated in an interrogatory response or testified at his discovery

deposition to his opinion that plaintiff's permanent problem with her middle finger resulted from nerve degeneration occurring prior to him performing plaintiff's first surgery. Plaintiff contends she was blindsided by defendant providing causation opinions at trial. Specifically, plaintiff asserts the trial court erred when it allowed defendant to lecture the jury as to how nerve degeneration brings about the development of a neuroma, and testify that compression of the median nerve over time caused plaintiff's symptoms.

¶ 52 We do not find plaintiff's argument persuasive. On March 4, 2016, defendant disclosed he would testify at trial that "Patients with severe carpal tunnel syndrome, like the Plaintiff, prior to [defendant]'s surgeries, already have severe nerve damage." Also on March 4, 2016, defendant disclosed his opinion that plaintiff's problems with her middle finger were a result of severe compression of the nerve, not because of any surgeries performed by him.

¶ 53 At defendant's April 2012 discovery deposition, he testified he had no opinions to a reasonable degree of medial certainty as to the cause of plaintiff's preoperative and postoperative symptoms at the time Dr. Fernandez operated on her. However, part of his explanation for not rendering an opinion was he had not reviewed all of Dr. Fernandez's medical records. By the time defendant filed his Rule 213 disclosures on March 4, 2016, he had reviewed all the records, as well as Dr. Fernandez's discovery deposition. We note, plaintiff never challenged defendant's March 4, 2016, Rule 213 disclosures.

¶ 54 We acknowledge that defendant, prior to trial, failed to explain in detail how nerve degeneration brings about the development of a neuroma. Likewise, before trial, defendant never outlined in depth how compression of the median nerve over time causes adverse symptoms. However, at defendant's discovery deposition, he testified that, based on the history of plaintiff's severe carpal tunnel syndrome and her EMG tests, he did not believe her

symptoms were related to the surgery he performed but were present prior to him performing surgery. Also, defendant's Rule 213 disclosures discussed (1) the chance of plaintiff's symptoms not improving due to the severity of her carpal tunnel syndrome, (2) that long-term compression of the median nerve negatively affects the outcome of carpal tunnel release surgery, and (3) that there was no evidence his surgery caused the neuroma.

¶ 55 Plaintiff cites *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 381-82, 805 N.E.2d 222, 234-35 (2003), in support of her argument that defendant disclosed new opinions that prejudiced her at trial. In *Clayton*, a doctor's new, undisclosed opinions at trial provided the jury with a new negligence theory, "namely, that defendant's failure to recognize the escalation in Cork's symptoms due to a lack of proper supervision caused the difficulty that occurred during the intubation and the resulting injury." *Id.* at 382. The court held that the new opinion "affected the outcome of the trial because defendant was surprised and prejudiced as a result." *Id.* Accordingly, the court reversed the jury's verdict in favor of the plaintiff and ordered a new trial. *Id.*

¶ 56 We find *Clayton* distinguishable. Here, prior to trial, defendant testified and disclosed that plaintiff had severe nerve damage that was the result of compression of the median nerve over time. While defendant discussed his opinion more in depth at trial, he did not disclose new opinions as to the cause of plaintiff's symptoms. Therefore, we find no prejudice to plaintiff in the trial court allowing this testimony at trial.

¶ 57 2. *Dr. Fernandez's Standard-of-Care Opinions and Causation Opinions*

¶ 58 Plaintiff next argues Dr. Fernandez, at his evidence deposition, testified to new opinions not previously disclosed during his discovery deposition or in his Rule 213 disclosures, as limited by the trial court. Specifically, plaintiff asserts Dr. Fernandez first testified he had no

standard-of-care opinions and that he was unable to determine the cause of plaintiff's neuroma, yet he gave standard-of-care opinions during his evidence deposition. Further, Dr. Fernandez identified carpal tunnel syndrome as the cause of plaintiff's neuroma. Plaintiff argues Dr. Fernandez's opinions caused prejudicial error.

¶ 59 We disagree and find Dr. Fernandez's testimony at his evidence deposition was consistent with his testimony at his discovery deposition. At his discovery and evidence depositions, Dr. Fernandez stated he offered no opinion about whether defendant met the standard of care. During his discovery deposition, Dr. Fernandez testified that (1) a patient's symptoms may worsen after carpal tunnel surgery; (2) a physician can perform a carpal tunnel release, meet the standard of care, and nonetheless, the patient can develop median nerve problems; and (3) patients can develop adhesions from an appropriately done carpal tunnel release surgery. During his evidence deposition, Dr. Fernandez responded to identical questions and testified that (1) a significant minority of carpal tunnel release surgeries result in an improvement, while a smaller minority can result in symptoms worsening or staying the same; (2) a lack of improvement in symptoms after surgery does not mean the surgeon deviated from the standard of care; and (3) adhesions can form through repetitive motion, especially where there is no evidence of a direct injury to the median nerve.

¶ 60 Ultimately, Dr. Fernandez's causation opinions were also consistent between his discovery deposition and evidence deposition. At his discovery deposition, Dr. Fernandez testified he had no way of knowing the cause of plaintiff's neuroma but that neuromas can form after a perfect carpal tunnel release surgery or after repetitive activity. At his evidence deposition, Dr. Fernandez testified adhesions to the median nerve can develop through repetitive motion and that he did not know the exact cause of plaintiff's neuroma. He also stated a neuroma

can develop simply because of severe compression related to carpal tunnel. We note that during his evidence deposition testimony, Dr. Fernandez did testify that the fact plaintiff had carpal tunnel syndrome gave him the opinion that her carpal tunnel syndrome caused her neuroma. However, when questioned further, Dr. Fernandez acknowledged that at his discovery deposition he testified under oath that he was unable to make any determination as to what caused plaintiffs neuroma. He then corrected his statement and confirmed he had no opinion as to when plaintiff's neuroma developed.

¶ 61 Plaintiff also argues Dr. Fernandez's opinions are general in nature and discuss what could happen to any patient, not what happened to plaintiff. However, when a physician relies on his expertise and experience to render opinions about what might have happened with a particular patient, he is simply confirming his expected outcomes through his experience with similar patients. See *Wilson v. Clark*, 84 Ill. 2d 186, 192-95, 417 N.E.2d 1322, 1325-27 (1981).

¶ 62 Dr. Fernandez is a board-certified hand surgeon. He testified to his qualifications, education, training, and experience at his evidence deposition. The well-established general rule regarding medical expert testimony is that the medical expert's educated opinion testimony is generally admissible if the expert is qualified by knowledge, skill, experience, training, and education in a field that has reliability and the testimony would assist the jury in understanding the evidence. *Noakes v. National R.R. Passenger Corp.*, 363 Ill. App. 3d 851, 857-59, 845 N.E.2d 14, 19-21 (2006). After laying the proper foundation, Dr. Fernandez appropriately testified regarding "patients in general" and his experience with those patients as it related to the plaintiff's condition, treatment, and complaints.

¶ 63 Plaintiff cites multiple cases to support her argument that at no time did Dr. Fernandez relate his testimony regarding other patients to the actual cause of plaintiff's injuries,

making the evidence incorrectly admitted and prejudicial. See *Martin v. Sally*, 341 Ill. App. 3d 308, 792 N.E.2d 516 (2003); *Lagestee v. Days Inn Management Co.*, 303 Ill. App. 3d 935, 709 N.E.2d 270 (1999); *Cancio v. White*, 297 Ill. App. 3d 422, 697 N.E.2d 749 (1998).

¶ 64 In *Martin,* 341 Ill. App. 3d at 315, an accident reconstructionist testified to statistical generalities regarding the likelihood of being injured in an automobile collision rather than the likelihood of the plaintiff being injured in the particular collision. Although the court in *Martin* found it was an error to admit the reconstructionist's opinion, it was not reversible error. *Id.* at 316. The court declined, under the circumstance, to find the testimony prejudicial. *Id.*

¶ 65 In *Lagestee*, 303 Ill. App. 3d at 937-38, the plaintiff was injured when he fell and hit his back on a nearby fence, requiring surgery to remedy the resulting herniated disk. At trial, defense counsel cross-examined plaintiff's medical expert on prior alleged injuries the plaintiff sustained to his back. *Id.* at 939. Plaintiff argued on appeal that this testimony was prejudicial. *Id.* at 942. The court held the defendant failed to provide a sufficient causal connection between plaintiff's back injuries that occurred years prior to his current injury. *Id.* at 946-47.

¶ 66 In *Cancio*, 297 Ill. App. 3d at 430, the court found "that because defendant failed to establish the requisite direct causal connection between [plaintiff]'s preexisting arthritis and the herniated disc, evidence of the arthritis was inadmissible."

¶ 67 Plaintiff contends that *Lagestee* and *Cancio* prohibited Dr. Fernandez from testifying regarding the relationship between plaintiff's carpal tunnel syndrome and the post-surgical outcome. However, plaintiff introduced her carpal tunnel syndrome into evidence and alleged the improper treatment of her syndrome by defendant.

¶ 68 Here, the testimony all related to the same medical condition brought about by severe carpal tunnel syndrome, for which plaintiff sought treatment from defendant and Dr.

Fernandez. Dr. Fernandez provided a sufficient causal connection when he talked specifically about the plaintiff's injury, condition, symptoms, and complaints as they relate to his experience in treating patients with the same or similar conditions. We find plaintiff was not prejudiced by the trial court allowing Dr. Fernandez's testimony at trial.

¶ 69 C. Closing Argument

¶ 70 Plaintiff further contends defendant's closing argument was improper and prejudicial. Specifically, plaintiff asserts she was prejudiced by defense counsel's (1) reliance on Dr. Fernandez's opinion testimony about other patients' experiences; (2) argument that plaintiff did not call any previous supervisors, vocational professionals or doctors to substantiate her claim that she could not work; (3) accusation that plaintiff's expert relied on a letter containing a hearsay statement that plaintiff's nerve had been lacerated during defendant's surgery; and (4) *ad hominem* attacks on plaintiff's counsel, calling him desperate for showing the jury the double-hearsay letter.

¶ 71 The purpose of closing argument is to draw reasonable inferences from the evidence and assist the jury in arriving at a verdict based on the law and the evidence. *Copeland v. Stebco Products Corp.*, 316 Ill. App. 3d 932, 948, 738 N.E.2d 199, 213 (2000). Our case is analogous to *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 923 N.E.2d 937 (2010). In *Wilbourn*, plaintiff sought a new trial based upon the closing arguments made by counsel for defendant. *Id.* at 854. Defense counsel criticized the timing of the lawsuit, the timing of the retention of plaintiff's expert, the proposition that the defendants were required to wait three and a half years for plaintiff to develop her theory of the case, and referred to plaintiff's attorney as a "slick lawyer." *Id.* The court, based on established case law, stated as follows:

"Questions as to the prejudicial effect of remarks in closing statements are within the discretion of the trial court and the results are affirmed absent an abuse of discretion. [Citation.] Even improper arguments will not warrant reversal without a substantial showing of prejudice. [Citation.] Parties are entitled to a fair trial, not a perfect trial. [Citation.]

The standard of reviewing a claim of improper argument is whether the argument was of such a character as to have prevented a fair trial. [Citation.] The trial court is in a unique position to gauge the effects of misconduct, having heard all of the testimony and arguments and having observed the parties and their effect on the jury. [Citation.] 'The attitude and demeanor of counsel, as well as the atmosphere of the courtroom, cannot be reproduced in the record, and the trial court is in a superior position to assess and determine the effect of improper conduct on the part of counsel.' [Citation.] Where the jury hears an improper comment by counsel, the trial court's prompt action in sustaining an objection can cure the possible error. [Citation.] Where, as here, the trial court tells the jury that closing arguments are not evidence, the scope and character of the arguments are left to the trial court and will not be reversed absent an abuse of discretion. [Citation.] In addition, if the trial was fair as a whole and the evidence was sufficient to

support a jury's verdict, a case will not be reversed upon review. [Citation.]" *Id.* at 855.

The court held the trial court's admonishment about closing argument not being evidence was sufficient to cure any alleged error. *Id.* at 856. The court found defense counsel's closing arguments did not deny plaintiff a fair trial. *Id.* at 857-58.

¶ 72 Here, before closing arguments, the trial court admonished the jury that closing arguments were not evidence. The court's instruction alone was sufficient to cure any alleged error. Further, we find the evidence in this case was sufficient to support a verdict for defendants. Dr. Fernandez's testimony that there was no evidence of a direct injury to the median nerve and the nerve was intact along its course, coupled with defendant's testimony, supported the proposition that plaintiff's outcome was consistent with patients who have preoperative severe carpal tunnel syndrome. Plaintiff objected to defense counsel's characterization of Dr. Fernandez's testimony, but the court again admonished the jury. The court also sustained an objection to defense counsel's assertion that plaintiff's expert relied on a letter containing double hearsay. As noted above, Illinois courts have consistently held that an admonishment is sufficient to cure any error in closing argument. *Id.* at 855-56.

¶ 73 The trial court observed the effect of the closing arguments on the jury, and was in a superior position to determine whether the arguments denied plaintiff a fair trial. The court determined that the arguments did not deny plaintiff a fair trial. Based on the court's admonishment and the trial testimony as a whole, we find plaintiff was not prejudiced by defendant's closing argument.

¶ 74 D. Dr. Grindel's Right Wrist Opinions

¶ 75 Lastly, plaintiff argues the trial court abused its discretion when it barred Dr. Grindel from testifying to the absence of a neuroma on plaintiff's right wrist as evidence the neuroma on her left wrist was not caused by compression of the median nerve but rather that defendant cut plaintiff's left median nerve.

¶ 76 While defendants did not address this issue in their brief (Ill. S. Ct. R. 341(i) (eff. May 25, 2018)), we find the trial court did not abuse its discretion by barring Dr. Grindel's right wrist testimony. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 504-05, 771 N.E.2d 357, 371 (2002) (a reviewing court is not constrained by forfeiture). The court properly found plaintiff failed to disclose Dr. Grindel's right wrist opinion pursuant to Rule 213.

¶ 77 Plaintiff argues the trial court's decision to bar Dr. Grindel's testimony was particularly erroneous because it allowed defendant to testify to new opinions regarding nerve degeneration and causation. As discussed above, defendant's testimony at trial was consistent with his testimony at his discovery deposition and his Rule 213 disclosures. At Dr. Grindel's discovery deposition, he testified he was unaware plaintiff had right-wrist surgery, and he did not have an opinion regarding the right wrist and the lack of neuroma found. At trial, plaintiff sought to introduce Dr. Grindel's opinion that plaintiff did not develop the neuroma on her left wrist due to long-standing carpal tunnel syndrome because Dr. Fernandez would have found a neuroma on plaintiff's right wrist when he operated on the right wrist months later. We therefore find the trial court did not abuse its discretion when it barred Dr. Grindel's undisclosed opinion regarding the absence of a neuroma on plaintiff's right wrist.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we affirm the trial court's judgment.

¶ 80 Affirmed.