2016 IL App (2d) 151111-U
No. 2-15-1111
Order filed September 15, 2016
Modified upon denial of rehearing October 25, 2016



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| ILLINOIS STATE TOLL HIGHWAY AUTHORITY,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>CHARLOTTE A. SEIDEL,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Lake County.<br><br><br><br>No. 14-SC-1992<br><br>Honorable Michael J. Fusz, Judge, Presiding. |

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Collateral estoppel bars defendant from arguing that the Tollway has no statutory authority to sue for negligence; the absence of a trial transcript or a substitute therefor deprives us of a basis for reaching questions regarding the sufficiency of the evidence; defendant owes the routine duty of a motorist to drive her car carefully so as to avoid damaging property owned by the Tollway; defendant forfeits the argument regarding an erroneous jury instruction for failing to cite the instruction at issue. Affirmed.

¶ 2 Plaintiff, Illinois State Toll Highway Authority (Tollway), filed a small claims negligence action against defendant, Charlotte A. Seidel, to recover damages that resulted when she drove her father's Jeep Cherokee into a Tollway guardrail. An arbitration award was entered in favor

of the Tollway and against defendant in the amount of $2,475. Defendant filed a notice of rejection of the award and requested a jury trial. The jury found defendant liable and awarded $2,475 in damages to the Tollway.

¶ 3 On appeal, defendant contends: (1) the Tollway has no statutory authority to bring a negligence action; (2) she had no legal duty to avoid hitting the guardrail, and the court gave an erroneous jury instruction on duty; (3) the evidence showed that defendant's driving was not a proximate cause of the accident; rather, it was the driver of another car who allegedly cut in front of her car who was the sole proximate cause; and (4) the Tollway failed to present sufficient evidence of damage to the guardrail. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On May 12, 2011, defendant was driving the Jeep eastbound on the Tri-State I-94 Illinois Tollway when she lost control of the Jeep and collided with a guardrail owned by the Tollway. According to the complaint, the Tollway alleged that defendant had a duty to exercise ordinary care in operating or maintaining the Jeep so as to avoid colliding with other vehicles on the highway or appurtenances to it. The complaint alleged that defendant was guilty of one or more of the following negligent acts or omissions: (1) driving the Jeep at an excessive speed in light of traffic conditions; (2) failing to maintain a proper lookout for other vehicles; (3) failing to maintain the Jeep properly; (4) failing to stop, slow down, or otherwise attempt to avoid colliding with the guardrail owned by the Tollway; and (5) failing to maintain proper control of the Jeep she was driving. The Tollway maintained that, as a direct and proximate result of one or more of the aforesaid acts and/or omissions by defendant, the Tollway expended money, time, and labor to repair the guardrail. The Tollway sought a judgment against defendant in the amount of $2,475 in damages.

¶ 6 Defendant filed a motion to dismiss the complaint, pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)), arguing that the Tollway has no statutory authority to bring a negligence action. The Tollway responded that defendant unsuccessfully raised this identical argument in her previous complaint for administrative review and therefore, collateral estoppel precluded defendant from relitigating that issue. Alternatively, the Tollway argued that, even if the issue was not barred by collateral estoppel, the Tollway does have the statutory authority to bring a civil suit. The trial court denied defendant's motion to dismiss. Thereafter, the matter was set for jury trial, and following the trial, the jury found defendant liable and awarded $2,475 in damages to the Tollway.

¶ 7 Defendant filed a posttrial motion, which she captioned as a motion for judgment notwithstanding the verdict or for a new trial. In the posttrial motion, defendant argued that the evidence showed the sole proximate cause of the accident was a driver cutting in front of her car and braking suddenly, and that the evidence was insufficient to establish damages to the guardrail. Defendant also contended that the Tollway does not have the statutory authority to bring a civil suit and that she had no duty to avoid damaging the guardrail.

¶ 8 The Tollway responded there was sufficient evidence to support the jury's verdict. The Tollway also argued that defendant had a duty of care to avoid damaging the guardrail. Once again, the Tollway asserted that collateral estoppel barred defendant from relitigating the issue regarding the lack of statutory authority to sue defendant, as this issue had been decided against defendant in the administrative action, including the most recent decision by the First District Appellate Court in *Seidel v. White*, 2015 IL App (1st) 141630-U.

¶ 9 The trial court denied defendant's posttrial motion, and defendant appealed. On February 16, 2016, defendant filed a motion to approve a proposed bystander's report, but she

withdrew the motion after the Tollway objected to it as untimely under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005), which requires service of a bystander's report within 28 days of filing a notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 A. Authority

¶ 12 Defendant first contends that the Tollway lacks the statutory authority necessary to bring a negligence action. The Tollway responds that collateral estoppel bars defendant from raising this issue, as it was resolved against her in a previous adjudication. We agree.

¶ 13 Collateral estoppel may be applied when the issue decided in the prior adjudication is identical with the one presented in the current action, there was a final judgment on the merits in the prior adjudication, and the party against whom estoppel is asserted was a party to, or in privity with a party to, the prior adjudication. *Du Page Forklift Service, Inc. v. Material Handling Service, Inc.*, 195 Ill. 2d 71, 77 (2001). Collateral estoppel applies to preclude relitigation of both factual and legal issues. *Id*. at 79.

¶ 14 Defendant and her father did not have insurance on the Jeep at the time defendant struck the guardrail. Prior to the filing of the present lawsuit, but after defendant hit the guardrail, the Tollway submitted a claim for the damage to the guardrail to the Illinois Department of Transportation (IDOT) pursuant to the Illinois Safety and Family Responsibility Law (Safety Law) (625 ILCS 5/7-100 *et seq*. (West 2010)). IDOT evaluated the damage at $2,475, and informed defendant and her father that a security deposit in that amount was required since the Jeep was uninsured. When IDOT concludes a security deposit is required due to an uninsured vehicle accident resulting in property damage of more than $500, it forwards the information to the Secretary of State (Secretary) (see 625 ILCS 5/7-201.2 (West 2012)), who then must

determine whether or not "there is reasonable possibility of a civil judgment" against the driver or owner of the vehicle for the damage (see 625 ILCS 5/7-205 (West 2012); 625 ILCS 5/11-406(a) (West 2012)). The Secretary made such a determination, and defendant and her father were required to post a security deposit. Defendant (and her father) filed a complaint for administrative review, challenging whether a security deposit was required on the basis that the Tollway lacked the statutory authority to bring a civil suit against defendant. Both the circuit court of Cook County and the First District Appellate Court rejected this argument. See *Seidel v. White*, 2015 IL App (1st) 141630-U.

¶ 15 We determine the elements of collateral estoppel have been satisfied. First, the issue regarding the Tollway's statutory authority to file suit is the exact issue defendant reasserts before this court. Second, the issue was essential to the judgment in the administrative action because, as pointed out by the Tollway, there would have been no possibility of a civil judgment against defendant otherwise. Finally, the third element is fulfilled because defendant, the party against whom estoppel is asserted, was a party to the prior adjudication.

¶ 16 Defendant counters that collateral estoppel does not apply here because section 7-215 of the Safety Law (625 ILCS 5/7-215 (West 2012)) states that actions and findings under the Safety Law shall not be referred to in any way in a civil suit. This section does not bar the application of collateral estoppel. Section 7-215, titled "matters not to be evidence in civil suits," refers to the prohibition of introducing administrative findings as evidence of the negligence or due care of a party at the trial of a civil action to recover damages. 625 ILCS 5/7-215 (West 2012). Clearly, this section does not preclude the exclusion of a legal issue, which was fully litigated and resolved in the trial and appellate courts.

¶ 17 Defendant further claims that the results of a summary proceeding cannot form the basis of collateral estoppel. This might be true as it relates to factual rulings, but the legal issue has been fully litigated *ad nauseam*. In particular, the appellate decision thoroughly explored and resolved the legal issue concerning the Tollway's authority to sue for damages and the Attorney General's authority to bring the lawsuit on behalf of the Tollway. Specifically, the First District Appellate Court concluded:

> "Given the Tollway's corporate existence, it [has] the capacity to sue for damages to its property. Although the Toll Highway Act does not explicitly say the Tollway can file suit, it is implied in the legislature's broad grant of authority to the Tollway. [Citations.] Moreover, the Attorney General has the authority to pursue lawsuits on the Tollway's behalf." *Seidel*, 2015 IL App (1st) 141630-U, ¶ 13.

¶ 18 B. Duty

¶ 19 Defendant next contends that she did not owe a duty to the Tollway to avoid hitting the guardrail. Defendant maintains that she owes no duty, in part, because the very purpose of having guardrails is to enable people to hit them and avoid a more serious fate.

¶ 20 In a negligence action, the plaintiff must plead and prove (1) the existence of a duty owed by the defendant to the plaintiff; (2) the breach of that duty; and (3) an injury proximately caused by that breach. *Ziemba v. Mierzwa*, 142 Ill. 2d 42, 45 (1991); *Ward v. K mart Corp.*, 136 Ill. 2d 132, 140 (1990); *Colonial Inn Motor Lodge, Inc. v. Gay*, 288 Ill. App. 3d 32, 39 (1997). The existence of a duty is a question of law and depends on whether the defendant and the plaintiff stood in such a relationship that the defendant is obliged to conform to a certain standard of conduct for the benefit of the plaintiff. *Ziemba*, 142 Ill. 2d at 47.

¶ 21 We do not find the relationship between defendant and the Tollway to be one of the legally recognized "special relationships" that give rise to an affirmative duty to aid or protect another against an unreasonable risk of physical harm as outlined in *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 20 (*e.g.*, common carrier and passenger, innkeeper and guest, custodian and ward, and possessor of land who holds it open to the public and member of the public who enters in response to the possessor's invitation). Accordingly, when considering whether a duty exists, we consider the following four factors: (1) the foreseeability that the defendant's conduct may injure another; (2) the likelihood of an injury resulting; (3) the burden to the defendant of imposing a duty; and (4) the consequences of imposing that burden. *Colonial Inn*, 288 Ill. App. 3d at 40. These four factors still focus on the relationship between the parties and not on the specific nature of the injury. See *Colonial Inn*, 288 Ill. App. 3d at 41. See also the discussion on duty in *Stearns v. Ridge Ambulance Service, Inc.*, 2015 IL App (2d) 140908, ¶ ¶ 8-19.

¶ 22 The Tollway relies on *Colonial Inn*, in which we held that a person who drove his car into a building, causing a fire and explosion that injured two people, had a duty to use due care to avoid driving his car into the building. *Colonial Inn*, 288 Ill. App. 3d at 43. We stated that the case did not involve "an unforeseeable plaintiff" and there were no "policy considerations that would negate the ordinary and routine duty of a motorist to drive his car carefully so as not to cause other parties injury or property damage." *Id.* at 42-43.

¶ 23 A guardrail is distinguishable from a building. Unlike a building, a guardrail is erected to provide a physical barrier for vehicles to avoid a more serious fate. However, an individual has a continuing duty to exercise reasonable care in operating a vehicle, and that duty does not end when the vehicle strikes a structure erected to protect an individual from a more serious fate.

Defendant still had the ordinary and routine duty to drive her car carefully and avoid causing damage to the guardrail, and she should pay for the necessary repair or replacement when she breached that duty.

¶ 24 Defendant's reliance on *Michalak v. County of LaSalle*, 121 Ill. App. 3d 574, 576 (1984), is not on point, as it concerned whether a duty was owed by the county to the motorist for the negligent installation and maintenance of the guardrail.

¶ 25 Defendant also maintains that the instruction given on duty was an erroneous statement of law. There are several problems with defendant's argument; the most blatant being defendant's failure to state which instruction she contends is a misstatement of the law. Defendant could be arguing about Illinois Pattern Jury Instruction, Civil, No. 10.04 (2011) (hereinafter IPI Civil (2011) No. 10.04), since she quoted it in the statement of facts. However, the Tollway's response that defendant forfeited this issue by failing to object at trial or in her posttrial motion is based on IPI Civil (2011), No. 70.01. The record shows that defendant did not object to the giving of IPI Civil (2011), No. 70.01, and did not raise an objection to this particular instruction in her posttrial motion; whereas, she did object to the giving of IPI Civil (2011) No. 10.04.

¶ 26 Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) provides that an appellant's brief must contain contentions and the reasons therefor, with citation to the authorities upon which the appellant relies. As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and a cohesive legal argument presented. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. "The appellate court is not a depository in which the appellant may dump the burden of argument and research." *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). Because defendant has failed to comply with

Rule 341(h)(7), defendant has forfeited this argument. See *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38.

¶ 27 Even if we were to overlook defendant's forfeiture, however, neither instruction was an erroneous statement of the law. "In Illinois, the parties are entitled to have the jury instructed on the issues presented, the principles of law to be applied, and the necessary facts to be proved to support its verdict. The decision to give or deny an instruction is within the trial court's discretion. The standard for determining an abuse of discretion is whether, taken as a whole, the instructions are sufficiently clear so as not to mislead and whether they fairly and correctly state the law." *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 505 (2002); *Groeller v. The Evergreen Healthcare Center LLC*, 2015 IL App (1st) 140932, ¶ 18. Further: "When the question is whether the applicable law was conveyed accurately, however, the issue is a question of law, and our standard of review is *de novo*. [Citation.]" *Studt v. Sherman Health Systems*, 2011 IL 108182, ¶ 13.

¶ 28 IPI Civil (2011), No. 10.04 states: "It was the duty of the defendant, before and at the time of the occurrence, to use ordinary care for the safety of the plaintiff's property. That means it was the duty of the defendant to be free from negligence." This instruction was used in conjunction with IPI Civil (2011), No. 10.02, without objection by defendant, to define "ordinary care." IPI Civil (2011), No. 70.01, concerns the duty of a driver on a public highway. The instruction states: "It is the duty of every driver of a vehicle using a public highway to exercise ordinary care at all times to avoid placing himself or others in danger and to exercise ordinary care at all times to avoid a collision." This is a standard instruction which defines the common law duty of persons operating motor vehicles on public highways, as stated in *Colonial*

*Inn*, 288 Ill. App. 3d at 43. We find both instructions were sufficiently clear so as not to mislead the jury and they fairly and correctly stated the law.

¶ 29 C. Proximate Cause and Damages

¶ 30 The last two arguments raised by defendant concern the evidence presented at trial. The first argument is that the evidence showed that the person who cut in front of her car was the proximate cause of the accident; not her driving. The second argument is that the Tollway failed to present sufficient evidence of damage to the guardrail.

¶ 31 Defendant filed a proposed bystander's report with the trial court three months after filing her notice of appeal and acknowledges that she withdrew it after the Tollway objected to it as untimely filed. However, defendant argues that no bystander's report is necessary "because there is no dispute as to the limited material facts associated with the legal issues that need to be decided." Proximate cause and damages are factual issues for the jury. See *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 44 (2004) (proximate cause); *Balough v. Northeast Illinois Regional Commuter R.R. Corp.*, 409 Ill. App. 3d 750, 770-71 (2011) (damages); *Tierney v. Community Memorial General Hospital*, 268 Ill. App. 3d 1050, 1063 (1995) (damages).

¶ 32 The absence of a report of proceedings or a substitute deprives us of a basis for reaching issues whose merits depend on the omitted matters including, as in the instant case, questions regarding the sufficiency of the evidence presented at trial. See *Berner v. Kielnik*, 117 Ill. App. 3d 419, 423-24 (1983) (issue regarding negligence/proximate cause). When a record is incomplete, we are bound to presume that all of the evidence heard by the jury was sufficient to support the verdict. See, *e.g.*, *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Accordingly, we presume the jury's resolution of these issues conformed to the law and had a sufficient factual basis.

¶ 33 On October 6, 2016, defendant filed a petition for rehearing pointing out, *inter alia*, that this court mischaracterized the issue as the Attorney General's authority to bring a lawsuit on behalf of the Tollway rather than the Tollway's authority to sue. While defendant's point on this particular ground is well-taken, counsel for defendant makes several troublesome comments. Counsel accuses this court of the following: (1) engaging in "judicial fantasy"; (2) making "misrepresentations" in our application of collateral estoppel; (3) "disingenuously" stating that we were unable to discern which instruction defendant argued was an erroneous statement of law where defendant admittedly failed to cite to the record to identify the instruction; and (4) "cavalierly" dismissing defendant's arguments on proximate cause and damages. We find such statements to be disrespectful to this court and extremely unprofessional. Every day this court receives petitions for rehearing filed by competent, professional attorneys asking us to reconsider aspects of opinions and orders, none of which resort to such hyperbole.

¶ 34 III. CONCLUSION

¶ 35 For the preceding reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 36 Affirmed.