IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Daniel Napoles,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2019 L 012406
	)	
Northeast Illinois Regional Commuter Railroad Corporation, d/b/a METRA,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

A jury is the sole judge of witness credibility. In this case, the jury had a substantial basis to disbelieve the plaintiff's trial testimony based on numerous contradictions with his past testimony, the testimony of coworkers, physician records, and surveillance footage of the plaintiff's physical activities. As a court is not permitted to contradict a jury's credibility determinations, the plaintiff's motion for a judgment notwithstanding the verdict or, in the alternative, for a new trial, in whole or in part, is denied.

Facts

This case concerns a November 21, 2016, vehicle collision. On that date, Daniel Napoles worked for METRA and was a passenger in a METRA pickup truck driven by Mike Collopy, another METRA employee, on Interstate 90 near Elgin, Illinois. Napoles testified that the pickup entered a two-mile-long construction zone that had a posted 45-miles-per-hour speed limit. He stated that he saw a sign indicating that the far-right lane would merge into the center lane in which Collopy was driving. Napoles did not tell Collopy about the construction or the speed posting.

Napoles explained that he saw a semitruck about a half-mile ahead begin to merge into the center lane. Napoles testified that he then reached for a beverage and happened to see that the pickup's speedometer was greater than 70 miles per hour. According to Napoles, the semi merged completely into the center lane and the pickup struck the back of the semi. Napoles testified that the pickup was traveling significantly faster than the semi and that there was only one semitruck length between the two vehicles after the semi had merged into the center lane. Napoles further stated that Collopy made no effort to avoid the accident or brake

before the collision and that Collopy was not paying attention because his chin was to his chest.

Napoles claimed various injuries resulting from the collision and described them to the jury. The jury also heard evidence that Napoles later underwent various medical examinations and took a leave of absence from METRA. His medical restrictions included a ban on heavy lifting. Napoles also presented the jury with a video recording of him attempting to lie down on a bed with his wife assisting him and with Napoles screaming in apparent agony.

METRA presented the jury with evidence contradicting Napoles's version of events. For example, Napoles admitted that the collision happened so quickly he did not have time to say anything to Collopy. METRA also repeatedly impeached Napoles on cross examination. For example, METRA impeached Napoles with his deposition testimony in which he said under oath that the posted speed limit in the construction zone was 55, not 45, miles per hour. Second, METRA showed Napoles a handwritten statement he made after the collision in which he wrote that the semi cut off Collopy suddenly; Napoles testified that his written statement was untrue and coerced. Third, when shown a doctor's note in which the doctor wrote that Napoles stated during an examination that Collopy had been travelling 60 miles per hour, Napoles denied ever making such a statement to the doctor. Fourth, Napoles also denied telling the same doctor, who wrote in the same medical record, that Napoles had said the semi suddenly merged into the center lane and that Collopy had attempted to brake.

Two METRA employees further contradicted Napoles's version of the events. Collopy testified that he did not know his exact speed, but stated that he was travelling with the flow of traffic because it was the safest thing to do. He also stated that there were no construction zone signs, reduced speed signs, or lane merger warnings. He testified that he was paying attention and would have noticed such signs and warnings had there been any. Collopy further testified that the semi sped past the pickup on its right, cut off Collopy with no warning, and then slammed on its brakes. Collopy explained that he tried to brake after the semi cut him off, but the events happened so quickly he was unable to do so.

Foreman Ray Monty also undercut Napoles's version of events. Monty was driving a boom truck about five minutes behind the pickup. Monty did not see the collision but noted that the far-right lane shut down abruptly. Monty testified that he had no idea the far-right lane would be closed until he saw warning cones forcing traffic to merge left. Monty testified that he nearly got into an accident when he had to merge left in front of vehicles traveling faster than his boom truck.

Apart from METRA introducing evidence undercutting Napoles's credibility as the events leading up to the collision, the jury heard and saw other evidence

bringing Napoles's overall credibility into question. For example, Napoles testified that he had golfed only once in his life, and that happened to be the day a METRA surveillance videographer followed Napoles and filmed him golfing on a course for the better part of a day. Napoles admitted to getting drunk following the round of golf, and subsequently failing to attend work conditioning for his injuries. In addition, METRA showed the jury the cover page from Napoles's Facebook account in which he referenced golfing and tee times.

The jury also heard that, Napoles took a leave of absence from METRA after the accident. Despite his medical restrictions that included lifting limits, Napoles applied for jobs using a resume that stated he was capable of heavy lifting. The jury also viewed a recorded examination by METRA's medical expert pursuant to Illinois Supreme Court Rule 215. During that examination, Napoles is shown having difficulty moving and is heard groaning while tying his shoes from a seated position, stretching his arms and legs as requested, and getting onto an examination table. METRA then showed the jury another surveillance video recorded days later of Napoles working at a car wash, including squatting, without any apparent difficulty.

In addition to the evidence presented, the jury also saw Napoles sitting comfortably at the plaintiff's table for long periods of time during the trial. Napoles's ability to sit for long periods contradicted his statements to doctors in which he said that he could not do so. The jury also saw Napoles walk from the plaintiff's table to the witness box with no apparent difficulty.

Apart from the credibility issues arising from the evidence, Napoles has identified two specific evidentiary controversies that he believes caused substantial prejudice. The first evidentiary controversy concerned METRA's subsequent disciplinary proceeding against Collopy. Napoles sought to introduce evidence of those proceedings against Collopy. This court denied Napoles from inquiring about those proceedings because they constituted an inadmissible subsequent remedial measure. This court did, however, permit Napoles to make an offer of proof in which METRA read into the record its December 1, 2016, notice of hearing that it had supplied to Collopy.

The second evidentiary controversy concerned GPS information about the pickup truck's speed before the collision. Signal Director David Moore, another METRA employee, investigated the collision, including gathering the pickup's GPS information. Moore testified that he reviewed the GPS data and concluded that Collopy had been speeding, but he did not recall the precise speed of the pickup before the collision. Moore believed that METRA made copies of the GPS data and presented them at Collopy's subsequent disciplinary hearing. METRA apparently did not keep the GPS data because METRA did not produce any during the pre-trial discovery period that started more than three years after the collision. Based on

that lack of information, Napoles sought a missing evidence jury instruction—I.P.I. 5.01—that this court refused.

The trial of this case took six days—February 3-7, 10, 2025. On February 10, the jury returned a verdict against Napoles and in METRA's favor. This court entered judgment on the verdict the same day. On March 12, 2025, Napoles filed a post-trial motion seeking a judgment notwithstanding the verdict (JNOV) on the issue of negligence and for a new trial on damages only or, in the alternative, for a new trial on all issues. METRA filed a response and Napoles a reply.

Analysis

Requests for JNOV or a new trial must overcome high evidentiary hurdles. A JNOV may be granted only if "'all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors [a] movant that no contrary verdict based on that evidence could ever stand.'" *Steed v. Rezin Orthopedics & Sports Med., S.C.,* 2021 IL 125150, ¶ 34 (quoting *York v. Rush-Presbyterian-St. Luke's Med. Cntr.*, 222 Ill. 2d 147, 178 (2006) (quoting, in turn, *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). The entry of a JNOV is inappropriate if reasonable minds could differ as to the inferences and conclusions to be drawn from the facts. *York,* 222 Ill. 2d at 178. A reviewing court, including a trial court on a post-trial motion, "should not usurp the function of the jury and substitute its judgment on questions of fact fairly submitted, tried, and determined from the evidence which did not greatly preponderate either way." *Id.* (quoting *Maple v. Gustafson*, 151 Ill. 2d 445, 452-53 (1992)). A reviewing court is not to reweigh the evidence, determine credibility of witnesses, or substitute its judgment simply because the jury could have drawn other inferences or conclusions. *Schiller v. HomeServices of Ill., LLC*, 2024 IL App (3d) 220405, ¶ 35.

The standard for a new trial is different. A trial judge is to set aside a jury verdict and order a new trial only if: "(1) the jury verdict is contrary to the manifest weight of the evidence or (2) serious and prejudicial errors were made at trial in the exclusion or admission of evidence." *McHale v. W.D. Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 56. "A verdict is considered to be against the manifest weight of the evidence only when the opposite result is clearly evident or where the jury's findings are unreasonable, arbitrary, and not based upon any of the evidence." *Bland v. Q-West, Inc.*, 2023 IL App (2d) 210683, ¶ 10. "[F]or a new trial based on the evidentiary rulings, the law requires finding the error caused substantial prejudice and affected the outcome." *Browning v. Advocate Health & Hosp. Corp.*, 2023 IL App (1st) 221430, ¶ 49.

Napoles's case is grounded on the Federal Employers' Liability Act (FELA). FELA explicitly provides that:

> [e]very common carrier by railroad . . . shall be liable in damages to any person suffering injury while he is employed by such carrier . . . for such injury . . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

45 U.S.C. § 51 (2006). To establish a cause of action under FELA, a plaintiff must prove that: (1) the defendant is a common carrier; (2) the defendant employed the plaintiff; (3) the plaintiff sustained an injury while employed by the defendant; and (4) the defendant's negligence caused the plaintiff's injuries. *Larson v. CSX Transp., Inc.*, 359 Ill. App. 830, 834 (1st Dist. 2005). In this post-trial motion, the dispute concerns only the last element of proof.

Napoles's post-trial motion correctly points out that if the plaintiff establishes negligence under FELA, the plaintiff carries only a slight burden on causation such that a railroad will be held liable if its negligence "played *any part, even the slightest*, in producing the injury." *Rogers v. Missouri P. R. Co.*, 352 U.S. 500, 506 (1957) (emphasis added). One court has written that the quantum of proof on causation in a FELA case is "to the vanishing point." *Heter v. Chesapeake & Ohio R. Co.*, 497 F.2d 1243, 1246 n.1 (7th Cir. 1974) (quoting William L. Prosser, The Law of Torts § 80, at 536 (4th ed. 1971)). Indeed, if the defendant's negligence contributed in any way to the plaintiff's injury, the plaintiff has met its burden of proof. *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 703 (2011).

Although a plaintiff's causation burden under FELA is lighter than in a common law negligence case, the basis of the railroad's liability is still negligence, not the mere fact that the employee was injured. *Ellis v. Union P. R. Co.*, 329 U.S. 649, 653 (1947); *Bahus v. Union Pac. R.R. Co.*, 2019 IL App (1st) 180722, ¶ 31. A plaintiff must, therefore, offer evidence establishing "the common law elements of negligence, including duty, breach, foreseeability, and causation." *Williams v. AMTRAK*, 161 F.3d 1059, 1061-62 (7th Cir. 1998). As explained further below, while each of the four elements is related, each element is also a distinct component of a FELA claim.

Whether a railroad owes the plaintiff a duty is a question of law for the court. *Fulk v. Illinois Cent. R.R.*, 22 F.3d 120, 125 (7th Cir. 1994). One of those duties is to provide a reasonably safe workplace. *Abernathy v. Eastern Ill. R.R. Co.*, 940 F.3d 982, 993 (7th Cir. 2019). A railroad breaches its duty to provide a safe workplace if it knows or should know of a potential hazard in the workplace and fails to exercise reasonable care to inform and protect its employee. *Coale v. Metro-North Commuter R.R.*, 621 Fed. Appx. 13, 14 (2d Cir. 2015). A railroad's duty of care turns, in a general sense, on the reasonable foreseeability of harm. *Ackley v. Chicago & N.W.*

Transp. Co., 820 F.2d 263, 267 (8th Cir. 1987). An employee suing a railroad under FELA must establish by evidence that there were circumstances in the workplace that the railroad could have reasonably foreseen as creating a potential for harm. *McGinn v. Burlington N. R.R. Co.*, 102 F.3d 295, 300 (7th Cir. 1996). Under FELA, foreseeability is established only if the railroad had actual or constructive notice of the condition. *Brzinski v. Northeast Ill. Reg'l Commuter R.R. Corp.*, 384 Ill. App. 3d 202, 205 (1st Dist. 2008) (citing *Holbrook v. Norfolk S. Ry.*, 414 F.3d 739, 742 (7th Cir. 2005)). An employer will not be held liable "if it has no reasonable way of knowing that a potential hazard exists." *Williams*, 161 F.3d at 1062-63. Napoles urges this court to find that causation exists because METRA could reasonably foresee the potential harm of the collision and that Napoles would be injured.

METRA's argument focuses not on causation, but on breach. METRA argues, in essence, that it did not breach a duty of care owed to Napoles because the jury found his description of the collision and the events leading up to it to be incredible. METRA's argument is grounded on the legal principle that it is the province of the jury to resolve conflicts in the evidence, to pass on the credibility of each witness, and to decide what weight should be given to each witness's testimony. *Jordan v. National Steel Corp.*, 183 Ill. 2d 448, 456 (1998). While minor discrepancies in a witness's testimony are not unusual, *In re M.W.*, 232 Ill. 2d 408, 438 (2009), and do not destroy a witness's credibility, *Longanecker v. East Moline Sch. Dist. No. 37*, 2020 IL App (3d) 150890, ¶ 45, METRA argues that Napoles's testimony and the rest of his evidence failed to establish that METRA breached any duty of care owed to him.

METRA also argues that the violation of state law, in this case driving speeds, does not constitute negligence *per se* under FELA. *Chesapeake & Ohio Ry. Co. v. Stapleton*, 279 U.S. 587, 593 (1929). Further, a railroad employee's violation of internal safety rules does not constitute negligence *per se*. *Atchison, Topeka & Santa Fe Ry. Co. v. Ballard*, 105 F.2d 768, 771 (5th Cir.) (citing cases), *cert. denied*, 310 U.S. 646 (1940). Rather, it is still within the province of the jury to determine whether negligence occurred. *Id.*

The central error in Napoles's motion for a JNOV is that he presumes the existence of his injury establishes METRA's liability. If that were true, there would be no requirement for a plaintiff suing under FELA to establish that the defendant breached a duty. That cannot be and is not the law. *Ellis*, 329 U.S. at 653; *Bahus*, 2019 IL App (1st) 180722, ¶ 31.

It is plain from the record that METRA submitted sufficient evidence for the jury to conclude that Napoles's version of the collision and pre-collision events were incredible. Rather, it was well within the jury's determination based on Collopy's and Monty's testimony that the version of events as testified to by the METRA employees, were truthful, logical, and consistent. Collopy testified that he did not

know the pickup's speed, but stated that he was driving with the flow of traffic because it was the safest thing to do. He stated that there were no signs for a construction zone, reduced speed, or a lane merger. He went further to testify that he was paying attention and would have noticed such signs and warnings had there been any. As to the collision, Collopy explained that the semi sped past the pickup on the right, cut off the pickup with no warning, and then slammed on its brakes. Collopy testified that he tried to brake after the semi cut him off, but the events happened so quickly he was unable to do so. Napoles also agreed that the events happened so quickly that he did not have time to warn Collopy.

Monty's testimony substantially corroborated Collopy's version of events. Monty told the jury that the far-right lane shut down abruptly and that he had no idea the far-right lane would be closed until he saw warning cones. Monty specifically corroborated Collopy's version of events by testifying that he nearly had an accident when the traffic cones forced him to merge left in front of vehicles traveling faster than his boom truck.

In contrast, Napoles had no corroborative testimony for his version of events. Standing alone, Napoles's evidence does not provide the type of actual or constructive notice of events that METRA would have had to have to find this collision reasonably foreseeable. While any employer, including METRA, would know that there generally exists at any time the potential for a collision involving one of its vehicles, such general knowledge does not constitute the type of actual or constructive notice of this particular event. *Szekeres v. CSX Transp. Inc.*, 617 F.2d 424, 430-31 (6th Cir. 2010). In short, the jury had ample evidence to conclude that METRA did not breach a duty owed to Napoles based on the semitruck driver's unsafe driving. In addition, the medical records, Napoles's inconsistent statements, the significantly impeaching surveillance videos, and his appearance in court were far more than sufficient to lead the jury to conclude that Napoles's version of events was incredible.

The only conclusion to be drawn from all the evidence presented to the jury when viewed most favorably for METRA does not so overwhelmingly support Napoles's request for a JNOV such that the jury's verdict for METRA could not stand. The reasonable minds of the jurors patently drew different inferences and conclusions than did Napoles based on all the evidence presented. Further, this court will not take the impermissible step of usurping the jury's function and substitute a different judgment given the state of the evidence presented to the jury.

Napoles's request for a new trial in whole or in part based on this court's discretionary evidentiary rulings to bar Moore's testimony about his investigation and to refuse a missing evidence jury instruction do not constitute serious and prejudicial errors. As to Moore's testimony, Illinois law is plain that evidence of post-accident remedial measures is not admissible to prove prior negligence. *Herzog*

v. Lexington Twp., 167 Ill. 2d 288, 300 (1995) (citing *Schaffner v. Chicago & N.W. Transp. Co.*, 129 Ill. 2d 1, 14 (1989)). An exception exists if the subsequent remedial measures are introduced for impeachment purposes. *Id.* (citing *City of Taylorville v. Stafford*, 196 Ill. 288, 290 (1902)). There is, however, an exception to the exception. Subsequent remedial measures are not even admissible for impeachment purposes if "the sole value of the impeachment rests on that same impermissible inference of prior negligence." *Id.* at 301-02. That is what Napoles sought to do in this trial.

Napoles wanted Moore's testimony as to his subsequent crash investigation to establish that Collopy violated METRA's internal guidelines and policies. Yet the only testimony excluded was METRA's notice of investigation sent to Collopy that directly referenced a disciplinary hearing. That document was presented during an offer of proof. Additionally, Napoles did not need Moore's testimony. Napoles presented the jury with evidence of METRA's speed and safety guidelines and got Moore to state that he had concluded Collopy was speeding. Based on that evidence, the jury was free to conclude that Collopy violated METRA's guidelines and policies without any discussion of subsequent remedial measures. Thus, there was no serious or prejudicial error to Napoles by restricting Moore's testimony.

Similarly, there was no serious or prejudicial error resulting from this court's refusal to issue a missing evidence jury instruction—I.P.I. 5.01—as to METRA's failure to produce the pickup's GPS data. To warrant the issuance of a 5.01 instruction, a party must establish that: (1) the evidence was under the control of the party and could have been produced by the exercise of reasonable diligence; (2) the evidence was not equally available to the adverse party; (3) a reasonably prudent person under the same or similar circumstances would have offered the evidence if he believed it to be favorable; and (4) no reasonable excuse for the failure has been shown. I.P.I. 5.01. Napoles faults METRA for not keeping the GPS information, yet the evidence presented does not support that conclusion. Moore testified merely that it was possible he reviewed the pickup's GPS data and that he believed copies of that information were given to the hearing officer as part of the investigation. All of that begs the question of whether the GPS information still existed by the time this case entered the discovery phase, which was more than three years after the collision; thus, any amount of reasonable diligence would have been for naught if the data no longer existed. Even if issuing a 5.01 instruction had been warranted, Napoles suffered no prejudice from this court refusing the instruction. As noted above, the jury heard testimony that Collopy was speeding and that he violated METRA's guidelines. In short, Napoles did not need the GPS information to prove what the jury already knew to be true. The inexorable conclusion is that the jury reached its verdict because the evidence showed no breach of duty by METRA as a result of the semitruck driver's unsafe driving and not the existence of causation as to Napoles's injuries.

Conclusion

For the reasons presented above it is ordered that:

Napoles's motion for a JNOV or in the alternative for a new trial in whole or in part is denied.

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John H. Ehrlich, Circuit Court Judge