

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

Timika Niles,)	
)	
Plaintiff,)	
)	
v.)	No. 2021 L 8289
)	
UCM Care Network Medical Group, Inc.)	
d/b/a UChicago Medicine Medical Group,)	
Primary Healthcare Associates, S.C.,)	
Chicago Metropolitan Obstetricians &)	
Gynecologists, Ltd., the Gynecology)	
Institute of Chicago, Ltd., and)	
Pierre Johnson, M.D.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

The Code of Civil Procedure provides relief in the form of a new trial under certain limited circumstances and if there exists reversible error. The alleged errors identified by the defendant do not meet the high evidentiary threshold necessary to justify post-trial relief. For this reason, the defendant’s motion for a new trial must be denied.

Facts

On April 1-4, 8-10, 2025, this matter was tried before this court and a jury. At the trial’s conclusion, the jury returned a verdict in favor of the plaintiff, Timika Niles, and against the defendant, Dr. Pierre Johnson, and awarded her damages totaling \$442,049.33. Johnson subsequently filed a motion seeking post-trial relief in the form of a new trial. Niles filed a response, and Johnson a reply.

Johnson raises three claims of error that he believes are substantial enough to warrant the granting of a new trial. First, Johnson assesses error arising from statements read or stated to the jury by Niles’s attorneys. This claim of error has two parts. The first concerns Niles’s attorney reading portions of Johnson’s discovery deposition in open court as substantive evidence. Niles’s attorney did so as authorized by Illinois Supreme Court Rule 212(a) after deciding not to call Johnson as an adverse witness in Niles’s case in chief. Johnson had objected to the reading of any portion of Johnson’s discovery deposition as evidence, arguing that the designated statements were not inconsistent with his trial testimony and,

therefore, did not constitute “admissions” under Illinois law. This court overruled the objection, noting that Rule of Evidence 801(d)(2) provides for the reading of “statements,” not “admissions.” This court also overruled Johnson’s counsel’s request to allow Johnson to take the stand immediately after reading from the discovery deposition to further explain the statements. Rather, four days later, Johnson testified in his own case, explaining the deposition statements as well as providing other substantive evidence.

The second error arising from Niles’s attorney’s conduct concerns statements he made during closing argument. At that time, Niles’s attorney stated that Johnson did not know the definition of the standard of care and that he got it wrong based on the admission read from his discovery deposition. In fact, Niles’s attorney erred because Johnson had testified as to what he thought was the standard of care in a medical malpractice lawsuit, although it was not what is generally accepted as the definition. Niles’s attorney mistakenly thought the error came from a deposition admission. When Johnson’s attorney objected, this court told the jury to rely on their memory and notes as to what Johnson had said.

A second claim of error concerns Johnson’s testimony about his previous testimony in other cases and whether he had “only” testified as a treating physician or a defendant. The record is plain that Johnson had given a deposition in at least two other cases, one in which, *Morris v. Advocate*, he was a defendant. The confusing testimony continued over two days, with this court eventually instructing the parties to submit a limiting instruction that the court could read to the jury. This court eventually rejected Niles’s proposed instruction and read to the jury the one offered by Johnson:

During the questioning of Dr. Johnson, he was asked whether he had testified previously in a courtroom. Dr. Johnson testified previously in the *Morris* case where a jury found in his favor.

Analysis

Johnson claims error based on this court allowing portions of his discovery deposition to be read to the jury during the trial. Although reading from discovery depositions during trial may not be common in Illinois, Supreme Court Rule 212(a)(2) authorizes the practice if the testimony is offered by a party opponent and concerns a matter within the scope of the witness’s agency or employment. Ill. S. Ct. R. 212(a)(2); Ill. R. Evid. 801(d)(2)(D). The use of discovery depositions in this manner has recently been clarified and approved of by the Illinois Appellate Court. *See Browning v. Advocate Health & Hosp. Corp.*, 2023 IL App (1st) 221430. *Browning* affirms that portions of discovery depositions may be read as former statements of a party opponent pursuant to Rule of Evidence 801(d)(2). *Id.* at ¶ 52. But *Browning* provides a broader cautionary tale as well. As explained:

[W]ell-established law requires the party seeking a new trial to demonstrate both prejudice and that the error affected the outcome. Defendants have failed to indicate the nature of the testimony they were prevented from eliciting that would have changed the outcome other than arguing about the unfairness of a one week or so delay between the reading of discovery deposition excerpts to the jury and defendants' examination of the physicians.

¶ 5.

As with the defendants in *Browning*, Johnson has done no more than to complain about the four-day delay between the reading of his discovery deposition and his live testimony. He fails to point to any deposition testimony that was omitted and should have been read. More significant, Johnson does not argue that he was prevented from eliciting any testimony that would have changed the outcome of the trial. Finally, if the prejudice was the delay, itself, the one in *Browning* was far longer—at least two weeks—but the prejudice there was equally minimal, if any. In short, there is no basis here for a new trial.

The error ascribed to the statement by Niles's attorney in closing argument is an equally attenuated basis for a request for a new trial. The reason lies in the basis for the statement made by counsel. In his discovery deposition, Johnson stated that the standard of care is "reasonable treatment . . . for a patient's condition that falls within the guidelines that does no harm but is of benefit with limited risk to a patient." On cross examination at trial, Johnson agreed with the answer he had previously provided. Then, in closing, Niles's attorney misstated that Johnson's definition came from his discovery deposition rather than from cross examination. In other words, Niles's attorney misspoke as to the origin of Johnson's definition, but not the substance of his definition. When Johnson's attorney interposed an objection, this court sustained it, and instructed the jury to rely on its memory and notes of the proceedings. As Johnson has failed to point out any different evidence that would have altered the outcome of the trial, there is simply no basis here for requesting a new trial.

Johnson's next claim of error revolves around very confusing and conflicting deposition and trial testimony. What is plain from the record is that Johnson had previously been a defendant in a medical malpractice lawsuit and that he had previously testified in court. Any other distinctions drawn by Niles's or Johnson's counsel in their briefs are ultimately unimportant. The evidence eventually given to the jury was that Johnson had been named as a defendant before—in *Morris v. Advocate*—but regardless of whether he ever testified previously in court, the jury in the other case had ruled in his favor and against the plaintiff. There is no prejudice to a jury hearing that the defendant was previously found not liable in

another medical malpractice lawsuit. Indeed, this court approved the wording of a limiting instruction offered by Johnson (and rejecting the one offered by Niles) that explicitly told the jury that Johnson had been found not liable in the previous trial. There is no basis for a new trial based on this kerfuffle over Johnson's past experience, or lack thereof, in the courtroom.

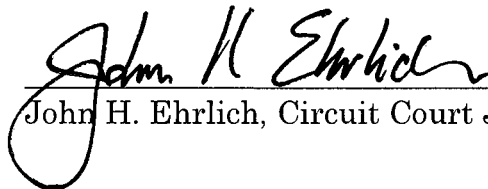
The third and final claim of error arises from this court's issuance of Illinois Pattern Instruction 15.01 and rejecting Johnson's offered I.P.I. 12.04 and 12.05. According to Johnson, the failure to issue the old I.P.I. 12.04 and 12.05 hamstrung his counsel's closing argument from arguing that someone else's conduct or something else was the sole proximate cause of Niles's injury. The absence of the sole proximate cause defense supposedly led the jury to believe that only Johnson's conduct had any causative effect on Niles's injury.

Johnson's current argument has limited persuasiveness because this court's rulings did nothing to limit in any way any argument he made or could have made at trial. The replacement of I.P.I. 12.04 and 12.05 with 15.01 may have changed the specific words the jury heard from the attorneys and the court, but not their meaning. Johnson had liberty to have pointed fingers at a variety of other actors and argued that they were the source of Niles's injury; nothing in the remaining jury instructions cabined Johnson from making a sole proximate cause defense based on the conduct of others. In short, there is no prejudicial error and no basis for a new trial.

Conclusion

For the reasons presented above, it is ordered that:

The defendant's post-trial motion is denied.



John H. Ehrlich, Circuit Court Judge