2024 IL App (1st) 221557

FIFTH DIVISION
Filing Date November 1, 2024

No. 1-22-1557

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| BOZENA BINKOWSKI, Individually and as Independent Administrator of the Estate of Philip A. Carrano, Deceased,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>INTERNATIONAL HEALTH SYSTEMS, INC., d/b/a Concord Place Retirement and Assisted Living Community; ADVOCATE HEALTH AND HOSPITALS CORPORATION, d/b/a Advocate Good Samaritan Hospital; ADVOCATE HEALTH AND HOSPITALS CORPORATION, d/b/a Advocate Medical Group; MALEEHA AHSAN, M.D.; TAHIR SHEIKH, M.D.; RIVERSIDE PSYCHIATRIC AND COUNSELING ASSOCIATES, P.C.; ALC HOME HEATH CARE, INC.; and ALC STAFFING LLC,<br><br>Defendants<br><br>(Advocate Health and Hospital Corporation, d/b/a Advocate Good Samaritan Hospital, Defendant-Appellant). | ) | Appeal from the Circuit Court of Cook County.<br><br>No. 17 L 000993<br><br>The Honorable Janet Adams Brosnahan, Judge, Presiding. |

JUSTICE ODEN JOHNSON delivered the judgment of the court, with opinion.
Justices Mitchell and Navarro concurred in the judgment and opinion.

**OPINION**

¶ 1 Plaintiff, Bozena Binkowski, filed a medical malpractice suit against the defendant hospital, Advocate Health and Hospitals Corporation d/b/a Advocate Good Samaritan (collectively Advocate), and others for medical negligence when her husband, Philip Carrano, committed suicide on February 21, 2015, sometime after receiving care at Advocate. During the litigation, several of the defendants were dismissed from the case for various reasons, leaving only Advocate as a defendant. Following a jury trial, the circuit court entered judgment on the jury's verdict against Advocate and the jury's collective damages award of $5 million. On appeal, Advocate contends that (1) Binkowski failed to prove that Dr. Ahsan proximately caused Carrano's suicide; (2) in the alternate, it should get a new trial because the jury verdict is against the manifest weight of the evidence and Binkowski's counsel committed misconduct and evidentiary error that deprived Advocate of a fair trial and distracted the jury from the absence of proximate cause evidence; and (3) the excessive awards for loss of society and Illinois Survival Act (755 ILCS 5/27-6 (West 2016)) damages require a new trial on all issues or a substantial remittitur. Oral argument for this appeal was held on September 24, 2024. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 Binkowski filed her complaint for medical malpractice on January 27, 2017, in the circuit court of Cook County. Trial commenced on April 28, 2022. Our background will be confined to a discussion of the factual information necessary for resolution of the issues raised on appeal.

¶ 4 A. Carrano's Background

¶ 5 Carrano and Binkowski were married in 1993 and were the parents of two children, Ella born in 2000, and Tommy born in 2010. Carrano was a pharmacist. He began seeing a psychiatrist along with the family doctor off and on in 2010 for anxiety. Carrano's condition worsened over time, and he developed depression in 2013. By 2014, he was under the care of a psychiatrist, Dr. Giolas.

¶ 6 In the spring of 2014, Carrano's behavior changed; he began to isolate himself and developed sudden fits of rage and anger. Dr. Giolas noted during a session with Carrano on May 21, 2014, that Carrano looked terrible, his voice was monotonic, he was slumped in his chair, and he was not responding to antidepressants. At home, Carrano moved into the basement where he slept on a cot and only emerged to eat. He stopped handling his personal hygiene and subsequently lost his job in June 2014.

¶ 7 Family interventions were unsuccessful, and after Carrano threatened to hurt himself with knives that he kept in the basement to "end it all," Binkowski arranged for an emergency responder wellness check. After the wellness check, Carrano sought treatment at Alexian Brothers Medical Center (Alexian Brothers) on June 15, 2014. At Alexian Brothers, Carrano was admitted to a locked inpatient unit where he was treated by a psychiatrist and received several types of therapies. While Carrano was hospitalized, a police officer advised Binkowski to seek an order of protection because living with Carrano was dangerous. Binkowski subsequently prepared the paperwork for an order of protection while Carrano was at Alexian Brothers. However, the order of protection was never entered by the court or served on Carrano, and Binkowski cancelled it because Carrano was doing the work to help himself. The

record contains no evidence that Carrano was aware of Binkowski's initial application for an order of protection.

¶ 8 After eight days, Carrano was discharged from the inpatient facility at Alexian Brothers and transitioned to a partial hospitalization program, where he went to the hospital five days a week to see a psychiatrist and have group therapy and spent nights at home with Binkowski and the children. When Carrano completed the partial hospitalization program, he started an intensive outpatient therapy program. However, Carrano stopped the outpatient therapy and returned to Dr. Giolas for treatment. Binkowski testified that Carrano got a new job, his fits of anger decreased, and he began participating in the family's daily life.

¶ 9 Nevertheless, Carrano began to deteriorate again in Fall 2014. He lost his job, and on December 2, 2014, he attempted suicide by overdosing on Xanax in the basement. The children's nanny, Maria Ciegotura, found Carrano lying down with foam coming from his mouth, and she called an ambulance. He was taken to Good Shepherd Hospital, where he was medically stabilized before he was transferred to the psychiatric unit at Advocate Good Samaritan Hospital (Good Samaritan) on December 7, 2014. Carrano was treated by Dr. Maleeha Ahsan at Good Samaritan Hospital[1] until his discharge on January 27, 2015, but she had no independent recollection of Carrano at trial. Carrano was also treated by a team of nurses, social workers, and therapists during his time at Good Samaritan.

¶ 10 An assessment was done when Carrano arrived at Good Samaritan, which resulted in him being labelled as a threat to himself characterized by suicidal ideation, increased severity of

[1] We use Advocate to refer to the legal defendant-appellant Advocate Health and Hospital Corporation doing business as Advocate Good Samaritan Hospital collectively. Good Samaritan Hospital is used to identify the location where treatment occurred.

symptoms, inadequate response to medication, and an inability to participate in an outpatient program due to the severity of his symptoms. Good Samaritan defined three levels of suicide precaution (SP): SP I for high risk of suicide, SP II for moderate risk, and SP III for low risk. Dr. Ahsan designated Carrano as SP II, which meant that someone checked on him every 15 minutes during his hospitalization, and his status never changed during his stay. When Carrano developed a respiratory illness during his hospitalization that required him to be transferred to a medical floor for treatment of sepsis on December 17, 2014, someone sat in his room the whole time because of his suicide risk.

¶ 11 On December 20, 2014, after returning to the psychiatric floor, Carrano was assessed as a high suicide risk because his depression had regressed. Because Carrano's depression did not respond to antidepressant medication, beginning January 7, 2015, he underwent electroconvulsive therapy (ECT). ECT consisted of electrodes placed on Carrano's skull with electricity used to induce a seizure. Carrano received a total of nine ECT treatments, the last occurring on January 26, 2014, the day before he was discharged from Good Samaritan.

¶ 12 Meanwhile, the social worker advised Binkowski to seek an emergency order of protection for herself and her family due to Carrano's symptoms and conditions during his hospitalization on December 10, 2014. Binkowski indicated that while she did not want to, she followed the social worker's advice and filed a petition for an order of protection on December 23, 2014, which barred Carrano from being within 500 feet of Binkowski or the children. The order was served on Carrano at the hospital on January 9, 2015. Per the hospital's standard procedure in such cases, the sheriff was escorted to a private room, and the patient along with medical staff for support, were brought to the room. Following service of the order of protection, a social

worker was present to monitor Carrano's coping response and to see how the order of protection affected him.

¶ 13 After being served with the order of protection, Carrano was described as very down, depressed, distraught, and isolated, and his medical records showed that the clinical barriers to his discharge included a high risk for suicide based on receiving the order of protection, as well as ineffective coping and discharge plans. Social worker Colleen Lindberg testified that the order of protection was expectedly very upsetting to Carrano, but he did allow the staff to help him. At that time, Carrano remained a high risk for suicide and was not ready to be discharged. On January 12, 2015, Lindberg wrote in her notes that the small progress Carrano had made disappeared after being served with the order of protection. The notes indicated that Carrano was very flat, hopeless, and despondent but also that he appeared to trust some staff and asked for help and that he continued with his medication and ECT. "Flat affect" can be significant in assessing a patient for depression and suicidality, hopelessness is one of the greatest emotions associated with suicidality, and despondency could also be significant when evaluating a patent for depression and suicidality.

¶ 14 On January 13, 2015, Lindberg wrote that Carrano was "unshowered," unkempt, and unshaven and displayed depressed, tired affect. She indicated that she would call his lawyer the next day to learn the outcome of the court hearing. The January 13, 2015, court date resulted in a change to the emergency order of protection; it was modified to allow unlimited phone contact between Carrano and the children. On January 15, 2015, Lindberg noted that Carrano was weeping and stated that after ECT it all hit him like a ton of bricks, and he tried to kill himself.

¶ 15 On January 17, 2015, Dr. Ahsan completed a "Need for Continued Treatment" form for Carrano on which she indicated that "30 days have passed since your admission date, and I have concluded after reassessment that continued hospitalization is both indicated and necessary." Dr. Ahsan then averred that it was still medically indicated and necessary for Carrano to remain in inpatient care. Carrano signed the form, affirming that it was explained to him and acknowledging that Dr. Ahsan would review his record and consult with him every 60 days. Despite this, Dr. Ahsan spoke with Carrano about going to an intermediate care facility[2] (ICF) on January 18, 2015, and Carrano indicated that he was willing to look at it. However, on January 20, 2015, Dr. Ahsan signed a note that Carrano was regressing in terms of threat to himself and continued to be inappropriate for outpatient treatment.

¶ 16 While undergoing ECT treatment on January 23, 2015, Carrano gasped and put his hands around his throat, which could have been interpreted as a potential suicide gesture. At that time, Carrano's medical records reflected a moderate level of depression. On the same day, Carrano met with the director of Concord Place, an independent living facility, although not an ICF. Rather, Concord Place was a senior living community divided into an independent living section and a supported living section, which was a licensed nursing care facility. However, Carrano could not stay in the supported living section because he was not age 65 or older. Concord Place was not a mental health facility, had no psychiatrists or psychologists on staff, and did not offer suicide monitoring or checks. The social worker spoke with Dr. Ahsan to make sure that she knew that Concord Place was not an ICF but merely an independent living facility that did not provide mental health care or suicide monitoring. While Concord

[2] An intermediate care facility (ICF) is a treatment facility where a patient resides and can receive individual, group and milieu therapy. Milieu therapy is structured group therapy in a conditioned environment with everyday activities.

Place had relationships with third party programs that allowed professionals to visit the facility, it had no staff for mental health or medical issues. Dr. Ahsan admitted at trial that she knew very little about Concord Place and the mental health services available for Carrano there and that she had never visited an ICF or an independent living facility but made recommendations based on what social workers relayed to her about the various facilities. Carrano was scheduled to meet with an ICF provider around the same time as the discussions about Concord Place happened. Carrano was accepted into Concord Place on January 24, 2015, although the director indicated that he had little discretion on admittances and could not discriminate based on mental health or physical needs.

¶ 17 The following day, January 25, 2015, Carrano told Dr. Ahsan that he was going to stay with his parents in Connecticut for a few weeks, but she was aware that his family did not support the visit and wanted him to stay in the Chicago area and "get better" first. Carrano's medical records indicated that the clinical barriers included no concrete discharge plans even though Carrano still had a flat affect and was still classified as SP II. Carrano also told Dr. Ahsan that his wife was going to drive him to Connecticut for a few weeks, which Dr. Ahsan knew was not true.

¶ 18 A social worker told Carrano that his discharge was planned for January 27, 2015, which he claimed was the first time he heard of it and stated that he did not want to go to Concord Place. Carrano then said that he was okay before saying that he was not okay, and he was crying and tearful.

¶ 19 Carrano's last ECT treatment was on January 26, 2015, and when he was discharged the next day, Dr. Ahsan testified that Carrano denied suicidal or homicidal thoughts. He had been compliant with his treatment, showed an improved mental status, was not suicidal, and was

able to complete activities of daily living. However, Dr. Ahsan also testified that a nurse documented that Carrano was having suicidal ideation/thoughts prior to his discharge, but she discharged him anyway based on her own assessment.

¶ 20 At the time of his discharge, Carrano had spent 52 days at Good Samaritan, 45 of those days spent in the behavioral health unit on SP II. The discharge instructions indicated that Dr. Ahsan was to follow up with the psychiatrist at Concord Place, and when the circuit court judge questioned if she knew that Concord Place had no psychiatrist on staff, Dr. Ahsan replied that "they are at every facility… and had to come and see the patient sooner or later if they were needing a psychiatrist or medical doctor." Dr. Ahsan admitted at trial that there was no safety plan written in Carrano's discharge orders, but she said she reviewed the coping plan with the patient before discharge. Dr. Ahsan testified that she did not deviate from the standard of care required for the circumstances.

¶ 21 Carrano arrived at Concord Place by taxi with his medications on January 27, 2015. His primary physician at Concord Place was identified as Dr. Haebich, who did not work for the facility although he rented an office there. Two days later, a checklist prepared by a nurse on Dr. Haebich's behalf indicated that Carrano displayed some psychological symptoms: anxiety/agitation, depression (severe), hopelessness, insomnia/disturbance, poor self-esteem, and withdrawal/isolation. A column for "Problems and Behaviors" indicated that Carrano was crying, had eating problems/appetite loss, and was wandering/pacing. On January 30, 2015, a psychiatrist, Dr. Aldura, wrote a prescription for Carrano. It was the only medical record from Dr. Aldura, and no other documentation was presented that Carrano saw him or any other psychiatrist while at Concord Place, and no trial witnesses knew of Dr. Aldura's involvement with Carrano.

¶ 22 Dr. Haebich referred Carrano for a psychological evaluation, and psychologist Dr. Neher, who was not employed by Concord Place but visited on Saturdays to perform psychological assessments and provide follow up therapy, attempted to meet with Carrano on February 7, 2015, but there was no answer from his room. He did not meet with Carrano until February 21, 2015.

¶ 23 The record indicates that no one from Concord Place checked with Carrano to see if he was performing daily activities, nor was any documentation made as to Carrano's affect or whether he was self-isolating or participating in daily activities. Additionally, Carrano did not receive any group or milieu therapy at Concord Place. The nanny visited Carrano several times at Concord Place to take him money, clothes, a pillow, and medication that Binkowski sent. During those visits, Carrano smelled and had not showered or shaved; he did not talk much and would walk a lot and cry.

¶ 24 When Dr. Neher met with Carrano on the morning of February 21, 2015, he performed a 45-minute initial evaluation in Carrano's room. Dr. Neher noted Carrano's prior history of depression and anxiety, as well as his bipolar disorders due to occupational and family stressors. Dr. Neher also noted that Carrano suffered from suicidal and homicidal impulses. During the evaluation, Carrano appeared depressed, had a flat affect, and did not smile or exhibit a lot of emotion. Carrano denied any suicidal ideation or plan, and Dr. Neher made a provisional diagnosis of depression. Dr. Neher did not have access to Dr. Ahsan's discharge summary prior to meeting with Carrano and stated that his interaction with Carrano did not suggest that Carrano had a risk for committing suicide that day. Additionally, Dr. Neher stated that it took more than one evaluation to determine if someone was suicidal. The plan was for him to meet weekly with Carrano.

¶ 25 At 2:33 p.m. on February 21, 2015, Carrano was served with an extended order of protection that extended the emergency order of protection for two years, although it could be rescinded with notice in 30 days. Unlike at the hospital, there was no one present when Carrano was served with the order of protection except the sheriff. After receiving the extended order of protection, Carrano went to his room and wrote a suicide note. He then took a butter knife, went to the 16th floor of Concord Place, where he moved aside an ice chest, and used the knife to remove screws from a hatch that allowed him access to the roof. Carrano then went onto the roof and jumped to his death.

¶ 26 B. Plaintiff's Expert Testimony at Trial

¶ 27 At trial, Binkowski presented the testimony of her retained psychiatric expert, Dr. Douglas Jacobs. Dr. Jacobs testified that he was a physician with a specialty in psychiatry, which is the study and treatment of behavioral and mental health disorders, including but not limited to diagnosis, history-taking, assessments, and development of a treatment plan that is responsive to the diagnosis of the patient. Defense counsel objected to Dr. Jacobs testifying as an expert because he had not discharged patients, however, Binkowski's counsel argued that Dr. Jacobs wrote the book on treating suicidal patients and taught doctors how to handle the discharge of suicidal patients. After a sidebar, the trial court allowed Dr. Jacobs to testify as an expert witness over defense counsel's objections.

¶ 28 Dr. Jacobs testified that, as an overall statement, a psychiatrist was unable to prevent the phenomena of suicide but was able to assess and treat patients who were at risk of suicide, and then in many situations, they can avert suicide. Dr. Jacobs noted that, despite this, there were still suicide deaths each year among psychiatric patients. Dr. Jacobs further testified that it was possible for a psychiatrist to identify patients who were at risk of committing suicide and stated

the risk factors for a patient committing suicide: gender, marital status, having a psychiatric disorder [3] or having suicidal behavior, as well as emotional symptoms and stressors. Dr. Jacobs stated that approximately 60% of persons who commit suicide have a mood disorder or depression. He also stated that a previous suicide attempt was also a risk factor for suicide, and persons who were hospitalized had an increased risk for suicide after discharge. Dr. Jacobs additionally noted that stressors included events or occurrences that overwhelmed the person's emotional system such as the acute loss of a loved one, loss of a job or financial status, relationship difficulties, and legal difficulties. He defined coping mechanisms as ways to deal with stressors, such as getting enough sleep, reaching out to one's support system, or looking at the situation and figuring out what one needs to do to move forward.

¶ 29 Dr. Jacobs also testified that inpatient suicide was different than outpatient suicide, with most suicides occurring outside of a hospital. He stated that a safety plan was a collaborative or joint agreement between the patient and their providers to develop a list of coping strategies and resources that had six components: (1) identify or be aware of warning signs of suicidal thoughts; (2) develop internal coping strategies to deal with the suicidal thoughts, such as listening to music as a distraction; (3) spend time with others in one's support system; (4) reach out to one's network or support system and let them know you are thinking suicidal thoughts and what is making you think about it; (5) connect with mental health care providers to talk about what led to the suicidal thoughts; and (6) lethal means restriction, meaning limiting the patient's access to lethal items within the home. Dr. Jacobs testified that the difference between a trigger and a cause of suicide was that a trigger was a stressor or occurrence that led to stress

[3] Dr. Jacobs stated that psychiatric disorders include mood disorders, substance abuse or alcohol disorders, or thinking disorders.

in certain people that then expressed itself as suicidality, while the cause of suicide was the underlying basis or foundation for suicide, that being a psychiatric illness.

¶ 30 With respect to Carrano's suicide, Dr. Jacobs testified that Carrano's chart from Good Samaritan was over 2000 pages, and he spent between 40 and 50 hours reviewing Carrano's case. After defense counsel's objection to any testimony regarding any of Carrano's other medical records from other providers, the circuit court indicated that Dr. Jacobs could testify to things he read in the Good Samaritan records or from reading the deposition testimony.

¶ 31 After reviewing Carrano's general medical history prior to December 2014, Dr. Jacobs noted that Carrano saw Dr. Giolas for anxiety and was prescribed medication. Nevertheless, Carrano went downhill over the next several months, which culminated in him losing his job, an increase in his marital stress, and his inpatient treatment at Alexian Brothers. Carrano's mental condition continued to deteriorate, despite his inpatient treatment, involvement in the step-down program (partial hospitalization), and reengagement with Dr. Giolas.

¶ 32 Dr. Jacobs opined that the records indicated that the event of December 2, 2014, was a *bona fide* suicide attempt, in that Carrano was intending to die because he stated that he was sorry that he was saved. Dr. Jacobs indicated that it was important to identify a *bona fide* suicide attempt when treating a patient because those thoughts and feelings could return. He identified Carrano's initial evaluation after his admittance to the Good Samaritan behavioral unit for patients experiencing psychiatric disorders: namely, that he was a threat to himself based on the December 2014 suicide attempt and that he regressed. Dr. Jacobs confirmed that Carrano was a level II, meaning that he would be checked on every 15 minutes by hospital staff, which was based on the treating doctor's order, specifically Dr. Ahsan.

¶ 33 Dr. Jacobs next described the patient intervention evaluation plan (PIEP) note, which identified the problem, the approach to be taken, where the patient was in terms of level of response to the intervention, and the plan going forward. The December 9, 2014, PIEP note described Carrano's depression, level of depression, anxiety, restlessness, and his risk of suicide, which remained the number one problem throughout Carrano's hospitalization. The interventions were to maintain safety, encourage the patient to attend and participate in group therapy, and to come to staff if he had concerns. Carrano's suicide level on that day was assessed at 7 out of 10. The December 12, 2014, PIEP note also indicated that Carrano was still very depressed, isolated, not talking much, and had poor eye contact and flat affect, which amounted to the patient being unemotional and nonresponsive. The PIEP further noted that Carrano stated that he was not feeling suicidal that day but was not promising he would not feel suicidal the next day. Dr. Jacobs testified that Carrano's difficulties continued throughout his stay; the December 20, 2014, PIEP note indicated that Carrano was still having severe difficulties, was a threat to himself, had regressed, his mental disorders were depression and bipolar, he required supervision and assistance, he was inappropriate for outpatient care, and he was still at SP II. The PIEP note from December 23, 2014, indicated that Carrano remained on SP II but the assessment of his threat to himself had improved. The following day, the social worker noted in a PIEP note that Carrano denied suicidal ideation, completed all activities of daily living, attended but did not participate in group therapy, was unable or unwilling to verbalize aftercare plans, and had a difficult family session. The clinical barriers to Carrano's discharge included obsessive thoughts and high risk of recurrent suicidal ideation. A progress note written by Dr. Sheikh, who covered for Dr. Ahsan while she was on vacation, indicated that Carrano was not functioning very well, and he subsequently increased Carrano's

antidepressant medication due to his concerns about Carrano's level of depression. Dr. Sheikh noted that Carrano was very distraught, upset, angry, and isolated himself, which was consistent with how Binkowski described her husband before he attempted suicide. Dr. Jacobs also noted that Dr. Sheikh recommended Carrano for ECT treatment. Carrano initially refused but eventually agreed to watch the ECT video and that he might agree to the treatment.

¶ 34 The January 2, 2015, PIEP note, one month after Carrano's suicide attempt, was written by Lindberg, and indicated that Carrano was severely depressed, crying, and remained a high risk for suicide. Carrano stated, "I'm done" and "I give up," during their session. Dr. Jacobs noted that on January 5, 2015, Carrano remained at a high suicide risk, and the following day, he was still at SP II.

¶ 35 Carrano received nine ECT sessions between January 7 and January 26, 2015. While some of Carrano's symptoms appeared to improve with the ECT, Dr. Jacobs noted that as late as January 25, 2015, Carrano was very depressed, as indicated in the PIEP note for that day. Carrano was in denial about not returning home to his family or going to Connecticut with his parents; he was also served with an order of protection on January 9, 2015, which triggered his hopelessness. Dr. Jacobs further noted that when Carrano was served with the order of protection at the hospital, there were caregivers present to help him process the situation. Dr. Jacobs opined that, based on Carrano's continued symptoms, the ECT treatment had not yielded a maximum response for him.

¶ 36 The January 13, 2015, PIEP note indicated that clinical barriers to Carrano's discharge were his high risk for suicide and his ongoing ECT because a patient could not be discharged while having ECT, but Carrano still needed ECT. On January 17, 2015, Dr. Jacobs noted that a need for continued treatment form was signed by Carrano and Dr. Ahsan, indicating that Dr.

Ahsan concluded after reassessment that Carrano's continued hospitalization was both indicated and necessary, and that his case would be reviewed every 60 days. An affidavit by Dr. Ahsan was included with the form.

¶ 37 On January 19, 2015, Dr. Jacobs indicated that a progress note by Dr. Ahsan indicated that she talked with Carrano about an ICF, which was a treatment facility, although not as extensive as an inpatient unit, where he would live until he was able to return home. The following day, a suicide risk assessment by Dr. Ahsan indicated that Carrano had regressed again in terms of threat to himself and others, his mental disorder, and he continued to be inappropriate for outpatient treatment; all of which were reasons for his continued hospitalization.

¶ 38 Dr. Ahsan's note on January 23, 2015, indicated that Carrano was scheduled to meet with an ICF and to continue with ECT treatment. However, Carrano instead met with the director of Concord Place, which was an independent living facility and not an ICF. On that same date, Lindberg discussed with Dr. Ahsan that Carrano was crying and sad about not going home. Additionally, Lindberg advised Dr. Ahsan that Concord Place was not an ICF that would provide medication management, meals, and psychiatrist and therapist services. In detailing the difference between an ICF and an independent living facility, Dr. Jacobs stated that an ICF would not only provide housing but would also have treatment personnel available throughout the day, group sessions, and regular visits by a psychiatrist and/or therapist that would be scheduled. In contrast, an independent living facility would essentially leave a patient unsupervised without anyone there to discuss anything upsetting that might occur. Dr. Jacobs further noted that while at Concord Place, Carrano did not meet with either a psychiatrist or psychologist from the time he arrived on January 27, 2015, until February 21, 2015, and thus Carrano had no contact with any therapeutic personnel during those 25 days. Dr. Jacobs opined

that a meeting with an ICF was never scheduled even though Dr. Ahsan documented ICF, and despite the social worker's correction.

¶ 39 With respect to Dr. Ahsan's progress notes on January 24, 2015, Dr. Jacobs noted that Carrano's depression was at 5 of 10, which meant he was doing better. But, reviewing the notes in context, Dr. Jacobs stated that between December 9, 2014, and January 24, 2015, after seven ECT treatments, Carrano's depression had only improved by 30%. Dr. Jacobs opined that this would still signal a moderate to high risk of depression. The note also indicated that Carrano was accepted at Concord Place, which signaled that Dr. Ahsan was proceeding with Carrano's discharge to an independent living facility.

¶ 40 On January 25, 2015, two days prior to discharge, Carrano was still at SP II and all other treatment interventions were still ongoing, such as medication adjustments, group therapy, and ECT. Dr. Jacobs testified that none of these services would have been available to Carrano at Concord Place- no 15-minute checks, no therapy, no medication adjustments because there was no psychiatrist on staff to prescribe medication, and no therapy. Dr. Jacobs noted that the progress note indicated that discharge options were still being determined.

¶ 41 No one from Good Samaritan Hospital met with Binkowski at this time, but Carrano met with social worker Amy Bartkowicz on January 26, 2015, and signed a release of information to his parents. The progress notes indicated that Bartkowicz spoke with Carrano's parents, who were not in support him coming to stay with them in Connecticut; rather, they wanted him to stay in the Chicago area and get better first. Nevertheless, Carrano stated that he would stay with his parents for a few weeks before coming home to his family. Bartkowicz informed Carrano that he was scheduled for discharge the following day. He indicated that it was his first time hearing of it and wanted to call his parents and his wife. Bartkowicz suggested that

he should consider going to Concord Place as a transition from the hospital. While the records noted the interview with Concord Place, there was no specific discharge date documented. Dr. Jacobs noted that Carrano's inability to accept the reality that neither his parents nor Binkowski wanted him to come home before completing treatment was part of the assessment of whether Carrano was ready for discharge. At that time, the notes reflected the following clinical barriers to discharge: maladaptive coping (his inability and reluctance to accept the reality of his living situation and what his support system wanted him to do), ECT, and discharge plans.

¶ 42 Dr. Jacobs testified that one of his major criticisms with how Carrano's care was handled was that while it was clear in mid-December 2014 that Carrano's family wanted him to stay at the hospital and get the treatment that he needed, Dr. Ahsan still accepted Carrano's statements regarding Binkowski driving him to visit his parents when she knew it was not a possibility. Dr. Jacobs testified that a physician's responsibility was to not only diagnose a patient but also to confront the patient with reality and help them move forward, which did not happen here.

¶ 43 During a January 26, 2015, meeting with social worker Christy Danderson, Carrano initially said that he was okay and then said he was not okay, and he was crying and tearful. The medical records indicated that Carrano was counseled and his mood and thought process were assessed, the social worker reinforced the utilization of coping skills and follow-up care to prevent hospitalization, Carrano continued to exhibit flat affect, and the clinical barriers included no concrete discharge plans. Dr. Jacobs opined that independent living was not suitable follow-up care for Carrano.

¶ 44 Dr. Jacobs also testified to the contents of Carrano's discharge referral sheet that was supposed to be sent to Concord Place when Carrano was discharged from Good Samaritan. However, Carrano's referral for psychological group services was dated January 29, 2015, and

the order was dated the following day. The checklist on the referral sheet indicated Carrano needed psychological intervention for the following: anxiety, agitation, severe depression, hopelessness, insomnia, poor self-esteem, isolation, crying, loss of appetite, wandering and pacing, multiple stressors including adjustment to a new place, family conflict, isolation, withdrawal from others, loss of independence, and loss of or reduced contact with family or friends. Dr. Jacobs noted that at the time of discharge, Carrano was at risk of suicide, he was diagnosed with bipolar disorder, had a previous suicide attempt that required medical intervention within the previous year, and expressed feelings of hopelessness about his situation, loss of love, loss of job, relationship issues, and legal issues. Dr. Jacobs opined that Carrano did not develop coping mechanisms at Good Samaritan that were necessary for him to overcome his suicidal tendency, and he did not see a safety plan developed between Good Samaritan and Carrano in the medical records.

¶ 45 Dr. Jacobs professionally opined, within a reasonable degree of psychiatric certainty, that Carrano was at a moderate to high risk of recurrent suicide when he was discharged from Good Samaritan based on (1) inadequate treatment of his depression, (2) no critical components of a safety plan that he needed going forward, and (3) failure to teach Carrano any internal coping strategies. Dr. Jacobs also opined that it was inappropriate to discharge Carrano when Good Samaritan did because the nine ECT treatments were inadequate, he was approved to be at the hospital for another 60 days as of January 17, 2015, and he had no internal coping strategies in place if he became suicidal. When asked whether Dr. Ahsan deviated from the standard of care when she discharged Carrano from Good Samaritan on January 27, 2015, Dr. Jacobs opined that she deviated from the standard of care based on Carrano's condition, his mental state, his level of depression, his denial of accepting the wishes of his support system, and the failure of

staff to address this with Carrano and teach him internal coping strategies. Dr. Jacobs also opined that it was totally inappropriate and a deviation from the standard of care to discontinue Carrano's ECT treatments and to discharge Carrano to an independent living facility without therapeutic personnel available for him to talk to on a regular basis. He noted that while Carrano was referred to a psychologist, it was three weeks before he saw him. Additionally, Dr. Jacbos noted that there was no one present to help Carrano when he was served with the order of protection on February 21, 2015, whereas at Good Samaritan, there were multiple caregivers present as part of the plan for such events. Dr. Jacobs further opined that at the time of his discharge, Carrano only had a 30% improvement in the level of his depression, which was still moderate to severe, he had a significant way to go before discharge, and that it was a deviation from the standard of care to discharge Carrano without a safety plan in place. Dr. Jacobs also noted that the referral sheet from January 29, 2015, and the psychologist's notes from February 21, 2015, were Carrano's only medical records from the entire time he was at Concord Place.

¶ 46 Dr. Jacobs further testified that, according to Advocate's own policy on suicide risk assessment and precautions in the behavioral health unit, patients would not be discharged while on suicide precautions. Dr. Jacobs stated that Carrano was still on SP II the whole time he was a patient at Good Samaritan, including the day of his discharge and thus it was a deviation for Dr. Ahsan to violate Advocate's policy and discharge a patient who was on suicide precautions.

¶ 47 In reference to Dr. Neher's assessment of Carrano on the day that he committed suicide, Dr. Jacobs noted that Dr. Neher did not have all Carrano's medical records and did not know the severity of Carrano's condition as he assessed him. Dr. Neher also did not know the severity

of the prior suicide attempt and, as a psychologist, was unable to prescribe medication or order ECT as a treatment option.

¶ 48 Finally, Dr. Jacobs professionally opined that the failure of Good Samaritan to treat Carrano's psychiatric disorder appropriately, along with the failure of Dr. Ahsan to develop coping mechanisms and a safety plan with Carrano, caused Carrano's suicide on February 21, 2015. He further professionally opined that each deviation from the standard of care committed by Dr. Ahsan caused or contributed to Carrano's suicidal death on February 21, 2015.

¶ 49 C. Jury Verdict and Posttrial Proceedings

¶ 50 In response, Advocate presented the testimony of its own expert, Dr. Steven Hanus, a board-certified psychiatrist who treated patients at Evanston Hospital and Highland Park Hospital on an inpatient basis. Dr. Hanus testified that Dr. Ahsan complied with the standard of care in treating Carrano.

¶ 51 After the close of the evidence and closing arguments, the jury deliberated over the course of three days before reaching a verdict for Binkowski.[4] During its deliberations on Friday, May 13, 2022, a member of the jury sent a note to the circuit court judge requesting to speak with the judge directly because he was unable to find in plaintiff's favor for moral reasons. After discussion with the attorneys on how to handle the note and reminding the attorneys that the jury included two attorneys, the judge sent a note back to the jury foreman stating that no one, not even the judge, was allowed to speak with any member of the jury during deliberations and to continue deliberating.

[4] The jury retired to deliberate for 5 hours on Thursday, May 12, 2022, 5 hours on Friday, May 13, 2022, and approximately 4½ hours on Monday, May 16, 2022.

¶ 52 At the close of deliberations, at 1:30 p.m. on May 16, 2022, the jury found that Advocate was medically negligent and awarded Binkowski $3 million for the loss of society, $1 million for Binkowski and the children's grief, sorrow, and mental suffering, and $1 million for Carrano's emotional distress between January 27, 2015, and his death on February 21, 2015. The circuit court subsequently entered judgment on the verdict.

¶ 53 Advocate requested that the jury be polled, and all the jurors, including the one who sent the note on May 13, 2022, answered that it was their verdict. Advocate subsequently moved for judgment notwithstanding the verdict (JNOV), arguing that Binkowski failed to establish proximate causation through her expert witness. Alternately, Advocate requested a new trial because of the speculative nature of Dr. Jacobs' causation testimony and the lack of causation evidence should lead the court to conclude that the jury's verdict was based on "unfounded, conclusory expert causation testimony" and was against the manifest weight of the evidence. Advocate's posttrial motion did argue in the alternative that the circuit court should order a remittitur to reduce the excessive verdict with respect to the survival claim and loss of society because the jury's verdict on those damages was not supported by the evidence. Additionally, Advocate argued that it was entitled to a new trial because the jury's verdict was the product of trial errors based on Binkowski's violation of Illinois Supreme Court Rule 213(f)(1) (eff. Jan. 1, 2018) by failing to disclose the subjects of Ella's trial testimony and the bases to support her damages claims, and further that the circuit court erred by limiting its cross-examination of Ella.[5] Advocate also argued that Binkowski violated Rule 213(f)(3) during Dr. Jacobs' testimony and the circuit court's limiting instruction did not cure the unfair prejudice because

[5] Ella is referred to as both "Ella" and "Elizabeth" in various places throughout the record and Advocate's brief.

its cross-examination of Dr. Jacobs was significantly reduced. Finally, Advocate challenged whether Dr. Jacobs had the "foundation" to criticize Dr. Ahsan's actions.

¶ 54 At the hearing on Advocate's posttrial motion on September 15, 2022, the circuit court denied the motion in its entirety. The court stated that Dr. Jacobs' education and experience duly qualified him to testify regarding the standard of care applicable to Dr. Ahsan, how she deviated from that standard of care, and how that deviation proximately caused or contributed to cause Carrano's death by suicide. The court rejected Advocate's argument regarding a gap in proximate causation, finding instead that Dr. Jacobs' and other witnesses' testimony presented facts to support Dr. Jacobs' opinion that Dr. Ahsan's deviation from the standard of care proximately caused Carrano's suicide. The court specifically found that the evidence presented at trial, when viewed in the light most favorable to Binkowski, supported the jury's conclusion on proximate cause, and further that Carrano's post-discharge decline supported the jury's conclusion that Dr. Ahsan's evaluation and assessment of Carrano's condition were inadequate and in error, and that the discharge order was professionally negligent under the circumstances. The court also found that a reasonably careful psychiatrist would have recognized the unreasonable risks inherent in discharging Carrano to Concord Place and would not have done so; Dr. Ahsan's failure to fulfill her duty of care to Carrano placed him in an unsuitable environment without the necessary support, treatment, and monitoring; and her negligence caused Carrano to suffer mounting emotional distress after his discharge from the hospital, which culminated in his taking of his own life, an outcome that was both foreseeable and avoidable.

¶ 55 The court further noted that the defense introduced other facts and testimony to counter Binkowski's evidence, but the role and duty of the jury was to weigh conflicting evidence and

to render a verdict. Binkowski presented adequate evidence from which the jury could and did find all the elements of the *prima facie* case of professional negligence including facts to support Dr. Jacobs' opinions and the jury's conclusion that Dr. Ahsan's breaches were the proximate cause of the injuries. The court additionally noted that the facts also supported its jury instruction on Survivor Act damages for Carrano's mental anguish.

¶ 56 Regarding Advocate's argument that the circuit court erred in allowing Ella to testify, the circuit court noted that the parties had previously agreed that the children's depositions would not be taken unless and until it was decided that they would be called as witnesses. Further, that Advocate's motion *in limine* and its posttrial motion referred to an e-mail that purportedly indicated the absence of an agreement, but that e-mail was not attached to the posttrial motion. The court noted that it reviewed e-mails during the trial on April 29, 2022, and considered the parties' arguments, and concluded that the e-mails did not establish that Binkowski refused to produce Ella for a discovery deposition; instead, the deposition was scheduled and rescheduled at a date and time suggested by the defense. The court also noted that while the defense agreed not to depose Ella about the suicide, suicide note, or orders of protection during the deposition, they nevertheless sought to cross-examine concerning those subjects at trial. Moreover, there was no foundation for Advocate to cross on those issues as it would have been outside the scope of direct examination. Advocate could have, however, questioned Ella about whether she feared her father and why and the frequency of her visits or contacts with her father, but chose not to do so. The court found that because defense counsel never argued at trial that they could or would impeach Ella on her assertion that she did not know about the suicide, the note, or the orders of protection, the court was "flummoxed and surprised" by defense counsel's new argument that he was prevented from challenging Ella's credibility before the jury.

Additionally, the court noted that, in Binkowski's answers to Rule 213(f) interrogatories filed on August 31, 2020, Ella was identified as a trial witness who would testify to the emotional and psychological suffering she experienced and continues to experience due to her father's untimely death and how it affected and continues to affect her daily life and mindset. The court found that Advocate did not assert its right to depose Ella earlier, nor did it serve a discovery request aimed at obtaining any documentation or records regarding Ella's disclosed emotional and psychological suffering; moreover, the court noted that it was not a foregone conclusion that such records would have been released as no judge ruled that Ella waived her privilege of nondisclosure under the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq*. (West 2020)). The circuit court concluded that Ella's testimony on the topic of her grief counseling was short and succinct; therefore, no discovery violation occurred, no barring sanction was warranted, and no undue prejudice was suffered by Advocate because Ella was permitted to testify about her grief counseling.

¶ 57 Finally, regarding Advocate's challenge of the circuit court's ruling that denied its motion to bar Dr. Jacobs' testimony, the circuit court found that it had the discretion to devise a sanction based on the discovery violation and found that a bar of the testimony was too severe. Instead, the court limited his testimony and gave the limiting instruction to the jury. The court noted that defense counsel's cross-examination was not limited and that it forced Dr. Jacobs to admit at least 10 times that he did not recollect certain facts contained in Dr. Giolas' records. This allowed defense counsel to demonstrate Dr. Jacobs' lack of familiarity with certain facts and to challenge his credibility; thus, there was no undue prejudice and no abuse of discretion.

¶ 58 Binkowski initially filed a motion for prejudgment interest after the jury's verdict. However, after the circuit court denied all of Advocate's requests for posttrial relief on

September 16, 2022, Binkowski withdrew her motion for prejudgment interest so that the judgment would be final. Advocate filed its notice of appeal on October 17, 2022.

¶ 59 II. ANALYSIS

¶ 60 The main issue before the court is whether the circuit court should have granted Advocate's motion for JNOV based on its assertion that Binkowski failed to establish that Dr. Ahsan's conduct was the proximate cause of Carrano's death by suicide. Alternately, Advocate contends that it should get a new trial because the jury verdict is against the manifest weight of the evidence and Binkowski's counsel committed misconduct and evidentiary error, which deprived Advocate of a fair trial and distracted the jury from the absence of proximate cause evidence. Additionally, Advocate contends that the excessive awards for loss of society and Survival Act (755 ILCS 5/27-6 (West 2016)) damages require a new trial on all issues or a substantial remittitur. We will examine each issue separately.

¶ 61 A. Jurisdiction

¶ 62 This court has jurisdiction over the appeal as a final disposition of the circuit court that decided all issues under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). Defendant's notice of appeal was due within 30 days of the circuit court's entry of final judgment. Ill. S. Ct. R. 303 (eff. July 1, 2017). As noted above, the circuit court denied Advocate's posttrial motion on September 16, 2022. Advocate filed its notice of appeal on October 17, 2022, which was timely as October 16, 2022, fell on a Sunday.

¶ 63 B. Denial of JNOV

¶ 64 Advocate first contends on appeal that the circuit court erred in denying its motion for JNOV because Binkowski failed to establish proximate cause as a matter of law. It argues that this case met the standard set forth in *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510

(1967), namely that, even viewing the evidence in the light most favorable to Binkowski, the record contains a gaping hole regarding proximate causation which was unsupported by the testimony of Binkowski's sole expert witness. Advocate maintains that Binkowski did not establish cause in fact or legal cause, which required the circuit court to direct a verdict in its favor.

¶ 65 1. *Standard of Review*

¶ 66 We review the circuit court's denial of Advocate's motion for JNOV *de novo*. *Taylor v. City of Chicago*, 2024 IL App (1st) 221232, ¶ 55. When deciding a motion for JNOV, the circuit court " 'may not reweigh the evidence and set aside the verdict simply because a jury could have drawn different conclusions or inferences from the evidence or because it feels other possible results may have been more reasonable.' " *Id.* (quoting *Northern Trust Co. v. University of Chicago Hospitals & Clinics*, 355 Ill. App. 3d 230, 241 (2004)). JNOV may not be entered if there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome. *Id.* (citing *Northern Trust*, 355 Ill. App. 3d at 242-43). In other words, JNOV is appropriate only in those cases where all the evidence, when viewed in the light most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand. *Id.* (citing *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992)). The standard for entry of JNOV is a high one, and JNOV is not appropriate if reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 37.

¶ 67 2. *Medical Malpractice—Proximate Cause*

¶ 68 To determine whether Advocate was entitled to a JNOV, we must determine whether the evidence that Binkowski presented at trial, when viewed in the light most favorable to Binkowski, so overwhelmingly favored Advocate that a verdict for Binkowski could not stand. As noted above, Binkowski filed a medical malpractice case against Advocate after Carrano's suicide death. To prevail on a cause of action for medical negligence, a plaintiff must establish (1) the applicable standard of care, (2) a deviation from that standard of care, and (3) an injury proximately caused by the deviation from the standard of care. *Wilson v. Dande*, 2024 IL App (5th) 220552, ¶ 61.

¶ 69 In a medical negligence case, the standard of care fits within the duty element and requires the defendant to act with the same degree of knowledge, skill, and ability as an ordinarily careful professional would act under similar circumstances. *Id.* Expert medical testimony is usually required to establish these elements. *Id.* Whether a medical professional deviated from the applicable standard of care and whether that deviation was a proximate cause of the plaintiff's injury are questions for the fact finder. *Id.* A physician's duty is limited to those situations in which a direct physician-patient relationship exists or there is a special relationship, such as when a physician is asked by another physician to provide a service to a patient, conduct laboratory tests, or review test results. *Weiss v. Rush North Shore Medical Center*, 372 Ill. App. 3d 186, 188 (2007).

¶ 70 Proximate cause is composed of two separate elements: cause in fact and legal cause. *Jinkins v. Evangelical Hospitals Corp.*, 336 Ill. App. 3d 377, 382 (2002). To establish cause in fact, there must be a reasonable certainty that a defendant's acts caused the injury. *Id.* A defendant's conduct is the cause in fact of the injury if the conduct was a material element and a substantial factor in bringing about the injury. *Id.* Legal cause is a question of foreseeability:

a negligent act is a proximate cause of an injury if an injury is of the type which a reasonable man would see as a likely result of his conduct. *Id.* Where there is an intervening act by a third person, the test we apply is whether the first wrongdoer reasonably might have anticipated the intervening cause as a natural and probable result of the first party's own negligence. *Id.*

¶ 71 In the case at bar, after a careful review of the evidence Binkowski presented at trial, particularly her expert Dr. Jacobs' testimony, we find that Advocate has failed to meet the standard for a JNOV. Contrary to Advocate's assertions, Binkowski's expert witness, Dr. Jacobs, clearly and unequivocally testified as to all three elements of medical malpractice in his very lengthy testimony: the applicable standard of care, deviation from the applicable standard of care, and an injury proximately caused by the deviation from the applicable standard of care.

¶ 72 First, Dr. Jacobs testified to the applicable standard of care in cases involving mental health patients who had a previous *bona fide* suicide attempt and remained under suicide watch throughout their hospitalization. He testified that in such cases, the standard of care included continuing with the ECT therapy, because although Carrano's depression had only improved 30%, he was responding to it; working with the patient to develop internal coping mechanisms for handling stressors; creating a safety plan for discharge; continued hospitalization due to Carrano's status still being SP II and he was approved for another 60 days; and further that at the very least, the applicable standard of care for discharge would have been to discharge him to an ICF where he would have had mental health services available, as opposed to an independent living facility where those services were not provided. Dr. Jacobs also testified to the applicable standard of care regarding discharge of a mental health patient who was undergoing ECT therapy, was still on SP II, and was still exhibiting signs of severe depression.

Finally, he also testified about Advocate's own policy regarding patients who were on suicide watch, which created an additional standard of care applicable to Carrano.

¶ 73 Next, Dr. Jacobs testified concerning Dr. Ahsan's deviation from the applicable standard of care. He testified that Dr. Ahsan's conduct in discharging Carrano contradicted her own notes, first, because there was no date for discharge or concrete discharge plan in place. Her notes further indicated that Carrano was still exhibiting severe depression symptoms and listed him as SP II, which meant that he was checked on every 15 minutes all day every day, and that Carrano was supposed to meet with an ICF provider. Instead, she had Carrano meet with Concord Place, an independent living facility, even after being advised by the social worker that it was not an ICF and would not provide any mental health or therapeutic services to Carrano; they outsourced to an independent psychologist. Indeed, Dr. Ahsan herself testified that she knew nothing about the various facilities and relied on what the social workers told her about them. Additionally, Dr. Ahsan never set up a safety plan with Carrano for discharge, never had him develop coping mechanisms for stressors, and never confronted him about not accepting reality concerning going home to live with family after discharge. Moreover, Dr. Ahsan's act of discharging Carrano was contrary to Advocate's policy regarding suicidal patients in the behavioral health unit. Finally, Dr. Jacobs testified to the delay in sending the referral information to Concord Place, which included the list of services that Carrano needed; all of which deviated from the applicable standard of care. In Dr. Jacobs' professional opinion, Dr. Ahsan should have never discharged Carrano to an independent living facility where no appropriate mental health services were available when he should have continued his hospitalization so he could have continued treatment. Further, Carrano should have never been discharged without a safety plan in place or until his suicide precautions dropped.

¶ 74 Moreover, Dr. Jacobs testified as to how Dr. Ahsan's deviations from the applicable standard of care proximately caused Carrano's suicidal death. Advocate argued in its brief and at oral argument that Dr. Ahsan had no foreseeability that Carrano would commit suicide and further that there were limits to Dr. Ahsan's legal responsibility once Carrano was discharged, especially considering the intervening event in this case. Advocate additionally argued that even Dr. Jacobs testified that suicide was not foreseeable and neither was the effect of the order of protection that was served on Carrano on February 21, 2015.

¶ 75 Contrary to Advocate's assertions, a review of Dr. Jacobs' testimony indicates that he established both cause in fact and legal causation. As noted above, a defendant's conduct is the cause in fact of the injury if the conduct was a material element and a substantial factor in bringing about the injury. *Jinkins*, 336 Ill. App. 3d at 382. Here, Dr. Jacobs clearly and unequivocally testified as to the applicable standard of care and Dr. Ahsan's deviations from that standard in discharging Carrano to Concord Place. It was Dr. Jacobs' professional opinion, and we agree, that Dr. Ahsan's discharge of Carrano, before he was ready for discharge per Advocate's own policy and without the proper discharge plans in place, coupled with his discharge to Concord Place, an independent living facility that did not offer any mental health services or have the same procedures in place as the hospital or an ICF, was a material element and a substantial factor in Carrano's suicide. Accordingly, we find that Dr. Jacobs' testimony established cause in fact.

¶ 76 Similarly, we find that Dr. Jacobs' testimony established legal causation. Legal cause is a question of foreseeability: a negligent act is a proximate cause of an injury if an injury is of the type which a reasonable man would see as a likely result of his conduct. *Jinkins*, 336 Ill. App. 3d at 382. Where there is an intervening act by a third person, the test we apply is whether the

first wrongdoer reasonably might have anticipated the intervening cause as a natural and probable result of the first party's own negligence. *Id.*

¶ 77 Here again, Dr. Jacobs testified that Carrano was negligently discharged from the hospital by Dr. Ahsan when he was still dealing with depression, was still on SP II precautions, was amid ECT treatment, had developed no coping mechanisms, had no concrete discharge plan or a safety plan in place, and was sent to an independent living facility rather than an ICF. As noted previously, Dr. Jacobs testified to the difference between an ICF and an independent living facility, namely the presence of therapeutic and medical staff that would have been presented to continue Carrano's treatment. Dr. Jacobs testified about the circumstances present when the first order of protection was served at the hospital, namely that Carrano was surrounded by caregivers to help him cope with it. By contrast, when Carrano was served with the order of protection at Concord Place on February 21, 2015, there was no one present but him and the sheriff. Carrano immediately went back to his room, wrote a suicide note, and jumped to his death. Dr. Jacobs testified to the different stressors that patients who are severely depressed and suicidal face and the necessity and importance of providing them with coping strategies as well as having caregivers present for them to talk through issues with. None of those things were present at Concord Place. While it is true that service of the order of protection was an intervening act by a third person, we believe that it was reasonable for Dr. Ahsan to anticipate that such an act, or realistically any stressor facing Carrano under the circumstances presented here, was a natural and probable result of her negligence and deviations from the applicable standard of care in discharging Carrano from the hospital before his condition had significantly improved, while he was still on SP II and while he was in ECT treatment, without a safety plan or concrete discharge plan, and sending him to an independent

living facility rather than an ICF. Accordingly, we find that Binkowski proved proximate cause through Dr. Jacobs' testimony.

¶ 78 We further note, as did the circuit court in ruling on this issue on Advocate's posttrial motion, that the jury heard the conflicting expert testimony presented during the trial, and where the parties offer conflicting medical testimony regarding the applicable standard of care, the jury is uniquely qualified to resolve the conflict, and a JNOV is inappropriate. *Bosco v. Janowitz*, 388 Ill. App. 3d 450, 459 (2009). We cannot say that the jury's verdict in favor of Binkowski was unreasonable, arbitrary, or that the opposite conclusion is clearly evident. As outlined above, the jury heard evidence regarding the proper standard of care and expert opinions regarding whether Dr. Ahsan breached the standard of care and proximately caused Carrano's death by suicide. The jury was free to weigh the evidence and judge the credibility of the witnesses presented. *Id.* at 461. It was within the province of the jury, as finder of fact, to listen to the competing expert testimony, weigh the evidence presented, determine the credibility of witnesses, and to determine whose testimony to accept or reject. *Id.* at 462.

¶ 79 We therefore find that reasonable minds could conclude that Binkowski established each of the elements of medical malpractice and as such, Advocate failed to establish that it was unequivocally entitled to a JNOV. Thus, we will not disturb the jury's verdict on this matter.

¶ 80 C. Jury Verdict Against Manifest Weight of the Evidence (Alternate Argument #1)

¶ 81 Alternately, Advocate contends that the jury verdict was against the manifest weight of the evidence. A jury verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary, and not based upon any of the evidence. *Wilson v. Dande*, 2024 IL App (5th) 220552, ¶ 63. Because we have concluded that Binkowski reasonably established the elements of medical

malpractice, we find that Advocate has not established that the opposite conclusion was clearly evident based on the evidence presented at trial and that the jury's verdict was not against the manifest weight of the evidence.

¶ 82 D. Posttrial Motion for New Trial—Rule 213(f) Violations (Alternate Argument #2)

¶ 83 As a second alternate argument in its posttrial motion and on appeal, Advocate additionally argues that the jury's verdict was the product of trial misconduct by Binkowski's attorneys and evidentiary errors that prevented the jury from focusing on Dr. Jacobs' dispositive causation concessions. Advocate further contends that Binkowski's violations of Rule 213(f) were prejudicial and denied it a fair trial and that the circuit court abused its discretion in allowing those witnesses to testify. As such, Advocate maintains that it was entitled to a new trial based on both those evidentiary errors and the circuit court's abuse of discretion. We review the trial court's denial of a motion for a new trial for abuse of discretion. *Aguilar-Santos v. Briner*, 2017 IL App (1st) 153593, ¶ 46.

¶ 84 Advocate argued in its posttrial motion and on appeal that Binkowski committed several Rule 213(f) violations that resulted in unfair prejudice, specifically focusing on the testimony of Dr. Jacobs and Ella. Advocate contends that the circuit court's decision to allow those witnesses to testify was an abuse of discretion, and the limiting instruction given to the jury for Dr. Jacobs' testimony did not cure the prejudice. Advocate's full argument is set forth above in the discussion of Advocate's posttrial motion and the subsequent hearing on that motion.

¶ 85 The imposition of sanctions is largely a matter within the discretion of the circuit court and will not be disturbed on review unless the sanctions constitute an abuse of discretion such as where the sanctioned party's conduct was not unreasonable or where the sanction itself is not

"just." *Wheat v. Murphy*, 2024 IL App (4th) 231307, ¶ 48. A "just" discovery sanction has been defined as one that, to the degree possible, ensures both discovery and trial on the merits. *Id.* In order to determine whether the circuit court abused its discretion, we examine the criteria on which the circuit court relied in making its determination of an appropriate sanction. *Id.* (citing *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 123 (1998)).

¶ 86 In determining the appropriate sanctions, the circuit court must consider the following factors: (1) the surprise to the adverse party, (2) the prejudicial effect of the proffered testimony or evidence, (3) the nature of the testimony or evidence, (4) the diligence of the adverse party in seeking discovery, (5) the timeliness of the adverse party's objection to the testimony or evidence, and (6) the good faith of the party offering the testimony or evidence. *Shimanovsky*, 181 Ill. 2d at 124.

¶ 87 Regarding Dr. Jacobs, Advocate contends that Binkowski violated Rule 213(f) by failing to disclose that Dr. Jacobs reviewed Dr. Giolas' records and that its motion to bar Dr. Jacobs' testimony should have been granted. We have reviewed the record, including Advocate's motion to bar, the circuit court's ruling during trial including the limiting instruction given to the jury, Advocate's posttrial motion, and the report of proceedings from the hearing on Advocate's posttrial motion where the circuit court fully set forth its reasons for denying Advocate's motion to bar Dr. Jacobs' testimony, as detailed above. We have reviewed the circuit court's discussion of the *Shimanovsky* factors and find no abuse of discretion in the circuit court's sanction. We agree with the circuit court that barring Dr. Jacobs' testimony would have been too harsh of a sanction and a death blow to Binkowski's case and that the limiting instruction was fair and did not prejudice Advocate in that Advocate was still able to challenge Dr. Jacobs' credibility. Thus, the circuit court did not abuse its discretion by giving

a limiting instruction to the jury concerning Dr. Jacobs' testimony and in allowing him to testify as an expert in Binkowski's case.

¶ 88 With respect to Ella's testimony, Advocate argues that Binkowski violated Rule 213(f) by not disclosing the subject of her testimony. However, our examination of the record and the circuit court's decision on this issue during the hearing on Advocate's posttrial motion reveal that no such discovery violation occurred. As the circuit court noted, Binkowski disclosed as early as August 31, 2020, that Ella would be a witness testifying about the effect of her father's death to her mental and emotional well-being. The circuit court also noted that Advocate's decision to wait until the eve of Ella's testimony to depose her was of its own choosing and further that there was no guarantee that Advocate was entitled to disclosure of Ella's mental health records. Thus, we find no discovery violation and as a result, no abuse of discretion by the circuit court in allowing Ella to testify.

¶ 89 Advocate also contends that it was prejudiced by Ella's testimony because it was a significant portion of Binkowski's closing argument. A review of the record disproves this statement. Binkowski's closing argument began on page 1991 of the supplemental record and concluded on page 2033, spanning 42 pages. Of those 42 pages, the portion of plaintiff counsel's argument focusing on Ella's testimony spanned but four pages (from pages 2018-22), and then briefly mentioned again on page 2024. Thus, contrary to Advocate's assertions, the discussion of Ella's testimony was not a significant portion of plaintiff counsel's closing argument—it was less than half. Moreover, we note that there were very few objections during plaintiff counsel's closing argument; three during the recitation of Carrano's medical records that were all overruled by the circuit court with cure instructions given to the jury. There was another objection during the discussion of Ella's testimony, where plaintiff's counsel referred

to his own high school experience, which was sustained and a cure instruction given. From our examination of plaintiff counsel's closing argument, we cannot say that the errors alleged by Advocate impaired the jury's verdict and compromised its right to a fair trial.

¶ 90 Accordingly, we conclude that the circuit court did not abuse its discretion in denying Advocate's motion for a new trial.

¶ 91 E. Excessive Damages—Remittitur (Alternate Argument #3)

¶ 92 Advocate makes two arguments concerning the damages awarded by the jury in this case. First, Advocate contends that the jury's award of damages under the Survival Act (Act) 755 ILCS 5/27-6 (West 2016)) were unsupported by the evidence. Additionally, Advocate contends that the jury's damages to Binkowski and her children for loss of society, grief, sorrow, and mental suffering were excessive. At oral argument, Advocate argued that while the jury is responsible for awarding damages, awards that are the product of passion and without evidentiary support should be rejected by the circuit court. Advocate requests that the damages awards are reversed or at the least, subject to a substantial remittitur by this court. We will consider each argument separately.

¶ 93 1. *Standard of Review*

¶ 94 When we review a jury's award for damages, the standard of review is whether the verdict is against the manifest weight of the evidence. *Blackburn v. Illinois Central R.R. Co.*, 379 Ill. App. 3d 426, 430 (2008). A verdict is against the manifest weight of the evidence when it is arbitrary, unreasonable, or not based upon any evidence. *Id.* A jury's award of damages is a question of fact and is entitled to substantial deference by the court. *Watson v. South Shore Nursing & Rehabilitation Center, LLC*, 2012 IL App (1st) 103730, ¶ 32. A jury's award of damages may only be overturned if the court finds that (1) the jury ignored a proven element

of damages, (2) the verdict resulted from passion or prejudice, or (3) the award bore no relationship to the loss. *Id.*

¶ 95 We review the ruling on a motion for a remittitur under the abuse of discretion standard. *Estate of Oglesby v. Berg*, 408 Ill. App. 3d 655, 661 (2011). We will find an abuse of discretion only if the circuit court's ruling was arbitrary, ignored recognized principles of law, or if no reasonable person would take the position adopted by the circuit court. *Id.* In determining if there has been an abuse of discretion, we may not substitute our judgment for that of the circuit court or even determine if the circuit court exercised its discretion wisely. *Id.*

¶ 96 The purpose of a remittitur is to correct an excessive jury verdict in limited and appropriate circumstances. *Id.* The trier of fact determines the amount of damages, and as a reviewing court, we give great deference to a jury's award of damages. *Id.* at 661-62. A verdict will not be set aside by a court unless it is so excessive that it indicates that the jury was moved by passion or prejudice or unless it exceeds the necessarily flexible limits of fair and reasonable compensation or is so large that it shocks the judicial conscience. *Id.* at 662. Where the jury's verdict falls within the flexible range of conclusions reasonably supported by the evidence, a remittitur should not be granted. *Id.*

¶ 97 2. *Survival Act Damages for Carrano's Emotional Distress*

¶ 98 Advocate first contends that Binkowski did not present sufficient evidence to support a $1 million jury damages award under the Act. Advocate contends that a damages award for Carrano's emotional distress that was unconnected to Dr. Ahsan's alleged conduct and of such a short duration from his discharge from Advocate falls outside the range of fair and reasonable compensation. Further, Advocate argues that in a medical malpractice case, a plaintiff may only recover for injuries resulting from the defendant's alleged negligence. Advocate

maintains that Binkowski failed to prove that it caused Carrano to endure emotional distress, the circuit court should not have given the instruction for damages under the Act, and the jury award is unsupported by the evidence.

¶ 99 Section 27-6 of the Act allows a decedent's representative to maintain those common law or statutory actions which had already accrued to the decedent prior to his death. 755 ILCS 5/27-6 (West 2016). A survival action allows for the recovery of damages for injuries sustained by the decedent up to the time of death. *Ellig v. Delnor Community Hospital*, 237 Ill. App. 3d 396, 401 (1992). The recoverable damages are those compensatory damages which the decedent would have been entitled to had he prosecuted the claim. *Patch v. Glover*, 248 Ill. App. 3d 562, 573 (1993). In a typical claim under the Act, the representatives of the decedent would have a cause of action for medical expenses and pain and suffering of the decedent up to the date of death. *Rodgers v. Cook County*, 2013 IL App (1st) 123460, ¶ 29.

¶ 100 In her complaint, Binkowski alleged that Carrano suffered severe, painful, and permanent injuries to his person and mind, which caused him disability, disfigurement, pain, and suffering. She claimed that the injuries caused him to incur medical expenses and aggravated his underlying mental condition, all to his damage. In our review of the evidence Binkowski presented at trial and as noted by the court in oral argument, both the nanny's and Dr. Haebich's testimony provided some evidence of Carrano's mental state and pain and suffering, namely Carrano's decline after his discharge from Good Samaritan to Concord Place. As the circuit court noted at the hearing on Advocate's posttrial motion, Dr. Ahsan's negligence in discharging Carrano caused him to suffer mounting emotional distress that culminated in his taking of his own life, which he planned while being unsupervised at Concord Place. The circuit court found, and we agree, that this justified the survival damages instruction to the

jury. While Advocate argues that Binkowski failed to prove that Carrano suffered any emotional distress that was not already caused by his underlying mental condition, we agree with the circuit court's assessment of the evidence that Carrano's mental health declined significantly, which allowed him to investigate, formulate and execute a suicide plan. We therefore find that the jury's $1 million damages award for Carrano's emotional distress was not against the manifest weight of the evidence and that Advocate's motion for a remittitur of those damages was properly denied.

¶ 101 3. *Damages for Loss of Society, Grief, Sorrow and Mental Suffering*

¶ 102 Next, Advocate contends that the jury's verdict for the $4 million in damages to Binkowski and her children for loss of society, grief, sorrow, and mental suffering was excessive and failed the test for fair and reasonable compensation. In its brief as well as at oral argument, Advocate maintained that Binkowski's manipulation at trial, particularly regarding the Carrano children, was an example of Binkowski's "gamesmanship," which gave an unfair advantage to Binkowski. Specifically, Advocate takes issue with Ella's testimony. At oral argument, Advocate stated that the accommodation throughout the trial was to shield the children from Carrano's suicide, Ella was not on the original witness list (although she was added and removed a few times as the proceedings progressed), and there was no mention of Ella's therapy during its deposition of her, which surprised them at trial. It argued that Ella's testimony, which was a significant part of Binkowski's closing argument, constituted unfair prejudice and inflamed the jury's passions. During oral argument, Advocate also pointed to the parties' estrangement: specifically, the extended two-year order of protection, which made Binkowski's and the children's loss of society claims speculative.

¶ 103 Loss of society and similar damages are recoverable under the Wrongful Death Act, which provides that the jury in a wrongful death suit may award damages to compensate the surviving spouse and next of kin for the pecuniary injuries resulting from the person's death. 740 ILCS 180/2 (West 2016). Such damages are premised on a rebuttable presumption that the surviving spouse and next of kin would have had a reasonable expectation of benefits from the continuation of the life of the deceased. *Watson*, 2012 IL App (1st) 103730, ¶ 33. This includes damages for grief, sorrow, and mental suffering. 740 ILCS 180/2 (West 2016).

¶ 104 Thus, the issue here is whether Binkowski and her children were entitled to recover for loss of society, grief, sorrow, and mental suffering as a matter of law. As noted, there is a presumption that, as Carrano's spouse and next of kin, they would have had a reasonable expectation of benefits from the continuation of his life. While Advocate argues that the parties were estranged due to the order of protection and the strain on the familial relationship prior to Carrano's hospitalization, the evidence established that Carrano suffered from severe depression, anxiety, and bipolar disorder, which is what led to the family's estrangement for safety concerns. Binkowski testified that prior to his illness, and even after Carrano initially sought treatment at Alexian Brothers, Carrano was an integral part of their family's daily activities. Even Dr. Jacobs alluded to the family's close relationship during his testimony, and Carrano was allowed unlimited phone time with the children during his hospitalization at Good Samaritan. There was evidence presented that Binkowski sent things to Carrano while he was at Concord Place through the nanny, as she was unable to visit due to the order of protection. Even before he was discharged to Concord Place, Carrano expressed to Dr. Ahsan that he had spoken with his wife, and she was going to pick him up and drive him to Connecticut. While that was obviously not true, it is some evidence of the relationship of Carrano and his family.

Despite Advocate's issues regarding Ella's testimony, she also testified about the close relationship between she and Carrano. While we agree with Advocate that there was some prejudice in allowing Ella to testify about her therapy, it was harmless at best. We therefore conclude that there was evidence presented at trial to support the presumption that Binkowski and the children had a reasonable expectation of benefits from the continuation of the life of the deceased.

¶ 105 Nor do we find the jury's damages award unreasonable or the result of passion. As noted by the court at oral argument, Binkowski requested $38 million in damages, and the jury awarded $4 million after three days of deliberation, which does not suggest an arbitrary damages award. We therefore affirm the jury's $4 million damages award to Binkowski and the children for loss of society, grief, sorrow, and mental suffering and deny Advocate's request for a remittitur.

¶ 106 III. CONCLUSION

¶ 107 In conclusion, we find that Advocate was not entitled to a JNOV and the circuit court properly entered judgment on the jury's verdict where Binkowski established each element of medical malpractice, including proximate cause. We also find that the circuit court did not abuse its discretion in denying Advocate's alternate request for a new trial based on trial and evidentiary errors. Lastly, we affirm the jury's $5 million damages award and deny Advocate's request for a remittitur. For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 108 Affirmed.

***Binkowski v. International Health Systems, Inc.*, 2024 IL App (1st) 221557**

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| **Decision Under Review:** | Appeal from the Circuit Court of Cook County, No. 17-L-000993; the Hon. Janet Adams Brosnahan, Judge, presiding. |
| **Attorneys for Appellant:** | Karen Kies DeGrand, Stetson F. Atwood, and Scott J. Kater, of Donohue Brown Mathewson & Smyth LLC, of Chicago, for appellant. |
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