2025 IL App (4th) 240905-U

NO. 4-24-0905

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 29, 2025
Carla Bender
4th District Appellate
Court, IL

BENJAMIN ELY, Individually and as Independent Administrator of the Estate of Victoria L. Ely, Plaintiff-Appellant, v. OSF HEALTHCARE SYSTEM, d/b/a OSF Saint Francis Medical Center; PEORIA SURGICAL GROUP, LTD.; THOMAS R. ROSSI, M.D.; and SAMUEL J. PERA, M.D., Defendants-Appellees.	)))))))))	Appeal from the Circuit Court of Peoria County No. 20L28 Honorable Stewart James Umholtz, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Knecht and Vancil concurred in the judgment.

ORDER

¶ 1 *Held*: (1) A directed verdict should be granted only if all the evidence (not just some of the evidence), regarded in the light most favorable to the nonmovant, so overwhelmingly favors the movant that no contrary verdict based on that evidence could stand—and regarding the evidence in the light most favorable to the nonmovant entails allowing the jury to resolve contradictions in the evidence.

(2) Because a jury instruction must have some basis in the evidence and the evidence was undisputed that a resident physician cut the decedent's external iliac artery, the circuit court did not abuse its discretion by declining to instruct the jury that one of the issues was whether the physician supervising the resident physician cut the artery.

(3) If an amended complaint lacks allegations that were in the previous version of the complaint and does not refer to those earlier allegations, the import of the amendment is that those earlier allegations are abandoned and are no longer at issue in the case.

(4) If, pursuant to Illinois Supreme Court Rule 213(g) (eff. Jan. 1, 2018), an expert opinion is barred because it was not disclosed in discovery, the lack of a supporting expert opinion can have the effect of excluding an issue from the case, and the exclusion of that issue can in turn make a proposed impeachment by a prior inconsistent statement an impermissible impeachment on a collateral matter,

a matter that has no relation to the cognizable issues in the case.

(5) If, on the stand, a physician gives an expert opinion on a vascular surgical procedure, then, even though the physician is certified only in general surgery and not in vascular surgery, the physician can be impeached with a contrary opinion on the vascular surgical procedure that is set forth in a textbook on surgery that the impeaching party proves is authoritative.

(6) If the circuit court admitted into evidence an exhibit without giving the jury a limiting jury instruction, the exhibit is, in its entirety, substantive evidence, and a party may, during closing arguments, freely refer to any part of the exhibit and display the exhibit to the jury.

(7) The purpose of the case in rebuttal is not to give the plaintiff a second opportunity to present evidence that was or should have been presented in the plaintiff's case-in-chief.

(8) Under the unqualified terms of Illinois Rule of Evidence 103(b)(3) (Oct. 15, 2015), rulings on motions *in limine* are unreviewable, even if it was apparent that the circuit court clearly understood the nature and character of the evidence sought to be introduced: if the court denies a motion *in limine*, a contemporaneous objection to the evidence must be made at trial, and if the court grants a motion *in limine*, an offer of proof must be made at trial—otherwise, the issue is unpreserved for appeal.

(9) In a civil case, claims of error omitted in the posttrial motion will be deemed, on appeal, as having been forfeited.

¶ 2 Plaintiff, Benjamin Ely, in his individual capacity and as the independent administrator of the estate of Victoria L. Ely, sued several defendants in the Peoria County circuit court, alleging they had provided her negligent medical treatment resulting in her death. The defendants are OSF Healthcare System, d/b/a OSF Saint Francis Medical Center (OSF), and Dr. Samuel J. Pera (OSF defendants) and Peoria Surgical Group, Ltd. (PSG), and Dr. Thomas R. Rossi (PSG defendants).

¶ 3 At the jury trial, after plaintiff rested, the OSF defendants moved for directed verdicts on all the allegations against them, and the PSG defendants moved for a directed verdict on some of plaintiff's allegations against them. The circuit court directed a verdict in favor of Dr. Pera and OSF as his principal. Consequently, the only claims left against OSF for the jury to

consider were claims of institutional negligence, such as the claim that OSF failed to deliver units of blood to the operating room (OR) fast enough. Also, claims remained against the PSG defendants.

¶ 4 The jury returned a general verdict in favor of OSF and the PSG defendants. Thus, Dr. Pera and OSF as his principal prevailed by a directed verdict, and OSF and the PSG defendants prevailed on the remaining claims by a jury verdict. The circuit court denied plaintiff's posttrial motion.

¶ 5 Plaintiff appeals. He challenges the directed verdict in favor of Dr. Pera and OSF as Dr. Pera's principal. He also claims that the circuit court erred in a variety of rulings before and during the trial. Some of those rulings concern forfeited or waived issues. Although we find an abuse of discretion in a couple of rulings, plaintiff has failed to carry his burden of showing that they inflicted substantial prejudice upon his case. He was entitled to a fair trial, not a perfect trial. Most of the court's rulings of which he complains and which are preserved for review do not strike us as an abuse of discretion, and we are unconvinced that the few rulings that were an abuse of discretion made his trial unfair. Plaintiff is on better ground, though, in his challenge to the directed verdict in favor of Dr. Pera and OSF as Dr. Pera's principal. With respect to those defendants, we decide, *de novo*, that the demanding standard for a directed verdict was not met.

¶ 6 Therefore, we affirm the circuit court's judgment in part and reverse it in part. We reverse the directed verdict against plaintiff and in favor of Dr. Pera and OSF as Dr. Pera's principal, and we remand this case for a trial on the three allegations of negligence that this directed verdict took from the jury. Otherwise, we affirm the judgment.

¶ 7 I. BACKGROUND

¶ 8 Complaining of bowel pain, the decedent, Victoria L. Ely, sought treatment at

OSF, where she was diagnosed with a partial obstruction of the small bowel. Previous abdominal surgery and radiation treatment had resulted in adhesions, or scar tissue, around her intestines, and these adhesions had caused the partial bowel obstruction. Dr. Rossi, a general surgeon, an employee of PSG, recommended laparoscopic surgery to release the bowel obstruction: a procedure called, more specifically, the lysis (or loosening) of adhesions. On September 19, 2019, after the decedent signed a consent, the surgery was performed at OSF.

¶ 9 A fifth-year resident physician, Dr. Pera, performed the laparoscopic surgery under the supervision of Dr. Rossi, who had over 30 years of surgical experience. As the lysis proceeded, the flimsy, airlike adhesions became more concrete, like opaque Saran Wrap. Because of the denseness and opacity of the adhesions encasing the organs in the decedent's retroperitoneum, Dr. Pera was unable to see the right external iliac artery in the laparoscopic procedure, and he accidentally cut the artery. There was copious bleeding from the artery, and the decedent coded on the operating table, that is, lost her pulse. Dr. Rossi then scrubbed in, took over the surgery, and called for blood stat (immediately) and a massive transfusion protocol. As cardiopulmonary resuscitation was being performed on the decedent, Dr. Rossi converted the surgery from a laparoscopic procedure to an open incision (open), removed a bowel so that he could better reach the source of the bleeding, and clamped and suture-ligated the lacerated external iliac artery, closing off the artery. (To "ligate" an artery means to tie it shut with a ligature.) The external iliac artery became the femoral artery lower in the body and supplied the lower extremities. Dr. Rossi thought that the artery he was suture-ligating was the internal iliac artery rather than the external iliac artery. He stopped the bleeding by sewing the artery shut. Units of blood arrived in the OR, and in response to transfusion and electric shocks to the heart, the decedent regained her pulse.

¶ 10 After a reevaluation in the postanesthetic care unit, it was determined, from the lack of a pulse in the leg, that the suture-ligated artery was the external iliac artery instead of the internal iliac artery. A general surgeon, Dr. Gavish Patel, whom Dr. Rossi had trained in vascular surgery, was called and arrived in 15 minutes. The decedent underwent a second surgery, in which Dr. Patel attempted to perform a femorofemoral bypass to channel blood from the left femoral artery to the right side and thereby restore blood circulation to the right leg. During this second surgery, the decedent suffered a fatal cardiac arrest from loss of blood. The cause of death was the laceration of the external iliac artery during the first surgery.

¶ 11 Plaintiff sued OSF, Dr. Pera, and Dr. Rossi for negligence. He sought to recover from OSF on the theory that it was Dr. Pera's principal and also on the theory that OSF was negligent during the first surgery by taking 19 minutes to deliver blood products from the blood bank to the OR.

¶ 12 At the trial on his second amended complaint, which took place in September 2023, plaintiff called, as an expert witness, Dr. Moses Fallas, a general surgeon from Cedars-Sinai Medical Center (Cedars-Sinai) in Los Angeles, California. Dr. Fallas testified that, in the treatment of the decedent at OSF, the standard of care was breached in four ways.

¶ 13 First, Dr. Fallas opined that Dr. Rossi had breached the standard of care by not being scrubbed in when the surgery entered "tiger country," an "area of increased danger." About half an hour into the operation, as Dr. Pera continued cutting tissue in the pelvic area with laparoscopic scissors, "Dr. Rossi mentioned to Dr. Pera that they were entering tiger country." At that point, in Dr. Fallas's opinion, the standard of care "obligated" Dr. Rossi "to be scrubbed" so that Dr. Rossi, with his superior technical skills and judgment, could be hands-on in the surgery, "guid[ing] [Dr. Pera] manually" instead of supervising him in a hands-off way by watching a

screen. It was not until Dr. Pera cut the external iliac artery that Dr. Rossi scrubbed in. That delay in scrubbing in was, in Dr. Fallas's opinion, a breach of the standard of care.

¶ 14 Second, Dr. Fallas opined that, once Dr. Pera and Dr. Rossi "enter[ed] an area where" they "could not delineate the anatomy," it was "negligent" of Dr. Rossi to continue the delegation of the surgery to Dr. Pera, a fifth-year resident. In the opinion of Dr. Fallas—who, himself, taught residents at Cedars-Sinai—Dr. Rossi should have taken over the surgery as soon as the anatomy was hidden by the encasing adhesions (although Dr. Fallas thought that it was appropriate for Dr. Pera to begin the surgery).

¶ 15 Third, Dr. Fallas opined that Dr. Rossi and Dr. Pera had breached the standard of care by failing to convert the laparoscopic surgery to an open incision as soon as the adhesions became so dense that the anatomy was obscured. When they were "in the area of the iliacs," when they were in that tiger country, "the standard of care require[d] protecting the iliacs." An open incision—a formal midline incision—would have enabled them to better see the anatomy and feel for the arterial and venous pulse with their fingers. Dr. Fallas explained that if a surgeon had not yet become experienced enough that the laparoscopic instrument was like an extension of his or her hands and if such tactile sensitivity was necessary under the circumstances, the hands should be used in an open incision, for "[t]he surgeon who is performing an open can literally feel a pulse from the external or internal." Dr. Fallas testified it was negligence "to proceed dissecting where they can't see" or feel. Instead of converting the surgery to open as soon as Dr. Pera and Dr. Rossi were unable to delineate the anatomy, they waited "until the injury occurred" to convert to open. If Dr. Rossi told Dr. Pera to convert to open and Dr. Pera nevertheless continued the laparoscopic cutting of tissue, that continued laparoscopic cutting by Dr. Pera would have been, in Dr. Fallas's opinion, a breach of the standard of care. Alternatively,

if, without telling Dr. Pera to convert to open yet, Dr. Rossi allowed him to continue "blind," so to speak, until the artery was cut, Dr. Fallas opined that the standard of care would have been breached by the delay in calling for a conversion to open. Either way, according to Dr. Fallas, there was a breach of the standard of care.

¶ 16 Fourth, Dr. Fallas opined that, as soon as Dr. Rossi had the bleeding under control by suture-ligating the external iliac artery, the standard of care required Dr. Rossi to call a vascular surgeon "in a timely manner," "[d]uring that first surgery." "[Y]ou can't ligate the external," Dr. Fallas explained, "because you're cutting off the blood flow to the leg." While acknowledging that Dr. Rossi "was trying to save the patient's life," Dr. Fallas noted that a vascular surgeon was available at OSF, which was a Level 1 trauma center, and "if there [are] vascular surgeons available and you have the blood controlled, standard of care would dictate that you have to call the vascular surgeon." Dr. Rossi and Dr. Pera did not do so. They "had not called for vascular consult" to "attempt to diagnose what they had injured." Dr. Fallas stated, "If they had any question in their mind before they took her off the table, they could have checked the pulses of her leg and her foot if they had a question of what was actually ligated." Apparently, they did not do so. In that respect, in Dr. Fallas's opinion, Dr. Pera and Dr. Rossi breached the standard of care.

¶ 17 Plaintiff's attorney asked Dr. Fallas:

> "Q. Do you have an opinion about the cause of [the decedent's] death?
>
> A. I think she bled to death.
>
> Q. Was her death related to the surgical injury?
>
> A. Of course.

Q. Was her death related to the breaches of standard of care you described?

A. Yes."

¶ 18 On cross-examination, the attorney for the PSG defendants had the following discussion with Dr. Fallas:

"Q. Doctor, you would agree that the standard of care does not say that once you are in tiger country that you must convert to open, true?

A. There is no standard of care for all the things that we're talking about. But it's intuitive, if I may continue with this answer—

THE COURT: I think you've answered the question.

BY [THE ATTORNEY FOR THE PSG DEFENDANTS]:

Q. Doctor, let me ask if you remember being asked this question and giving this answer in your deposition. This is at Page 58.

'QUESTION: The standard of care doesn't say that once you are in tiger country, you must convert to open, true?

ANSWER: No.'

Do you recall being asked that question and giving that answer?

A. Yes."

¶ 19 Dr. Fallas further acknowledged, on cross-examination, that Dr. Pera performed the surgery under the supervision of Dr. Rossi. Consequently, Dr. Fallas was "critical of Dr. Pera" only " 'to some extent' " or "[t]o a degree," as he put it.

¶ 20 Other expert witnesses testified. To the extent that their testimony is relevant to the issues that plaintiff raises on appeal, we will discuss their testimony in the analysis.

¶ 21 II. ANALYSIS

¶ 22 A. The Directed Verdict in Favor of Dr. Pera

¶ 23 Counts XV and XVI of the second amended complaint alleged that Dr. Pera had breached his duty of care in 12 ways, enumerated in subparagraphs (A) through (L) of paragraph 5 of those counts. At trial, after plaintiff rested, the OSF defendants moved for a directed verdict in their favor and against plaintiff on those 12 allegations. During the arguments on the motion, plaintiff dismissed, with prejudice, 9 of the 12 allegations, leaving only subparagraphs (A), (B), and (D). According to those remaining three subparagraphs, Dr. Pera had done the following:

> "(A) Carelessly and negligently continued dissecting when unable to identify the anatomy that was being transected;
>
> (B) Carelessly and negligently continued dissecting after being told by an attending physician to discontinue; [and]
>
> ***
>
> (D) Carelessly and negligently injured the external iliac artery."

The circuit court granted the OSF defendants' motion for a directed verdict on those remaining allegations.

¶ 24 On appeal, plaintiff argues that because he adduced evidence of the standard of care corresponding to subparagraphs (A), (B), and (D) and because Dr. Rossi conceded that "there was no visualization of the vascular structures during the time of the dissection" (to quote from plaintiff's brief) and that "the surgery performed by [himself] and Dr. Pera resulted in injury to [the patient's] vessel (external iliac artery) which caused her death," the circuit court erred by granting the OSF defendants' motion for a directed verdict on those subparagraphs.

¶ 25 For the following reasons, the OSF defendants maintain that the circuit court was correct to grant their motion for a directed verdict as to subparagraphs (A), (B), and (D).

¶ 26 1. *"No Standard of Care"*

¶ 27 First, the OSF defendants contend that, "based upon the evidence presented in [plaintiff's] case-in-chief," "a jury could not have found that Dr. Pera breached any standard of care." According to the OSF defendants, "[t]he testimony of Dr. Fallas, [plaintiff's] sole expert on the issue of the doctors' alleged negligence, did not provide a basis upon which the jury could find that Dr. Pera's actions breached any applicable standard of care." Specifically, the OSF defendants quote Dr. Fallas's testimony that " '[t]here is no standard of care for all the things that we're talking about.' "

¶ 28 That isolated remark in Dr. Fallas's testimony does not overwhelmingly negate the existence of an applicable standard of care. A motion for a directed verdict should be granted only if "all of the evidence so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand." *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010). "On review, all of the evidence must be construed in the light most favorable to the nonmoving party." *Id.* If we construe Dr. Fallas's testimony in the light most favorable to plaintiff, as we are supposed to do in our *de novo* review of the directed verdict (see *id.*), Dr. Fallas could be understood as meaning this: although "[t]here is no standard of care for *all* the things that we're talking about," there is a standard of care for *almost* "all the things that we're talking about," *i.e.*, all the things except converting the laparoscopy to an open when entering tiger country. (Emphasis added.) After all, the question that elicited Dr. Fallas's answer that "[t]here is no standard of care for all the things that we're talking about" was "Doctor, you would

agree that the standard of care does not say that once you are in tiger country that you must convert to open, true?"

¶ 29 On redirect examination, Dr. Fallas clarified that "if tiger country *implied loss of anatomic identification and visibility*, then conversion to open was *mandated* before the injury occurred." (Emphases added.) Thus, when his testimony is taken as a whole, Dr. Fallas could be understood as offering this opinion: although there is no standard of care requiring the conversion of a laparoscopic surgical procedure to an open incision simply because of the entrance into "tiger country" (in the sense of increased risk from proximity to anatomical structures that would ill tolerate injury), if the entrance into tiger country is accompanied by "the loss of anatomic identification and visibility," the standard of care requires conversion to an open incision.

¶ 30 In any event, even if Dr. Fallas must be understood as having contradicted himself, such a contradiction would be a *nonevent* for purposes of a motion for a directed verdict. In ruling on such a motion, the circuit court should "construe[ ]" "*all* of the evidence *** in the light most favorable to the nonmoving party" (emphasis added) (*id.*), and if there are contradictions in the evidence, the court should allow the jury to resolve those contradictions (see *Jones v. DHR Cambridge Homes, Inc.*, 381 Ill. App. 3d 18, 28 (2008) ("A directed verdict is granted improperly where *** the determination regarding conflicting evidence is decisive to the outcome." (Internal quotation marks omitted.)); see also *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992) ("Unquestionably, it is the province of the jury to resolve conflicts in the evidence")). A directed verdict cannot be justified by cherry-picking a sentence in a witness's testimony and disregarding other parts of the witness's testimony that militate against a directed verdict. Repeatedly, Dr. Fallas opined that Dr. Pera had breached the standard of care. Dr. Fallas opined,

for example, that, by continuing to operate laparoscopically when they were unable to adequately visualize the anatomy, Dr. Rossi and Dr. Pera breached the standard of care. He opined, in other words, that they breached the standard of care by continuing to operate "without converting to open." He also opined that Dr. Pera breached the standard of care by injuring the external iliac artery. Plaintiff argues that, in an evaluation of the OSF defendants' motion for a directed verdict, those parts of Dr. Fallas's testimony should count as well. Plaintiff is correct.

¶ 31 2. *Criticism Directed Primarily at Dr. Rossi*

¶ 32 On cross-examination, the attorney for the OSF defendants had the following discussion with Dr. Fallas about Dr. Pera's having performed the surgery under Dr. Rossi's supervision and what that fact meant for the relative blameworthiness of the two physicians:

> "Q. Now, it is true, isn't it, that you are not really critical of Dr. Pera in his performance of the procedure itself, fair?
>
> A. To a degree but, again, as you said, he was under the direct supervision and—of Dr. Rossi.
>
> Q. Yeah. In fact, you were specifically asked whether you were critical of Dr. Pera, and the best you could come up with was 'to some extent I am'?
>
> A. That's kind of what I said today."

¶ 33 At the end of this cross-examination, there was the following exchange:

> "Q. If Dr. Pera were operating in a manner that he was instructed to do, then you would not be critical of him?
>
> A. For the most part, that is true."

From those questions and answers, the OSF defendants conclude, "Dr. Fallas's equivocal testimony, which essentially laid the blame on Dr. Rossi, did not establish an evidentiary foundation for finding that Dr. Pera's actions deviated from any standards of care."

¶ 34 "To sustain an action for medical negligence, plaintiff must show: (1) the standard of care in the medical community by which the physician's treatment was measured; (2) that the physician deviated from the standard of care; and (3) that a resulting injury was proximately caused by the deviation from the standard of care." *Neade v. Portes*, 193 Ill. 2d 433, 443-44 (2000). In the following exchange, Dr. Fallas opined that, despite being under Dr. Rossi's supervision at the time of the breach, Dr. Pera himself breached the standard of care:

> "Q. *** Was Dr. Pera operating in an area where he was unable to delineate anatomy?
>
> A. Per his deposition I believe he said that clearly.
>
> Q. And Dr. P[e]ra injured the external iliac?
>
> A. Correct.
>
> Q. And that was a breach of the standard of care by Dr. Pera?
>
> A. Under the supervision of Dr. Rossi, yes."

The elements in *Neade* do not require that the breach was unsupervised. See *id.*

¶ 35 When opining that Dr. Pera had breached the standard of care, Dr. Fallas did not always add the qualification that Dr. Pera was under Dr. Rossi's supervision. For example, there was this dialogue between plaintiff's attorney and Dr. Fallas:

> "Q. Now, did Dr. Pera breach the standard of care by injuring the external iliac?
>
> A. I'd say yes."

¶ 36 Even in his own testimony, Dr. Rossi appeared to agree that the standard of care required protecting the external iliac artery:

> "Q. *** Now, you agree that the external iliac is a structure that the standard of care requires to be preserved?
>
> A. Yes. As a rule, that's correct."

¶ 37 Those opinions by Dr. Fallas and Dr. Rossi are at least some evidence that Dr. Pera breached the standard of care by injuring, or failing to preserve, the external iliac artery. See *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003) (For the plaintiff's case to survive a motion for a directed verdict, the plaintiff must have "proffer[ed] at least some evidence on every element essential to [the plaintiff's underlying] cause of action." (Internal quotation marks omitted.)). Thus, we conclude, in our *de novo* review, that the circuit court erred by granting the OSF defendants' motion for a directed verdict on subparagraph (A): whether Dr. Pera "[c]arelessly and negligently continued dissecting when unable to identify the anatomy that was being transected."

¶ 38 3. *Continuing to "Dissect" After Being Told to Stop*

¶ 39 Subparagraph (B) claimed that Dr. Pera "[c]arelessly and negligently continued dissecting after being told by an attending physician to discontinue." Dr. Pera disputed that he violated a directive by Dr. Rossi to stop the surgery. In the following exchange, Dr. Pera denied that Dr. Rossi told him to stop before Dr. Pera accidentally cut the external iliac artery:

> "Q. Did Dr. Rossi ever give you an order to stop dissection prior to the injury?
>
> A. No, sir.

Q. If Dr. Rossi gave you an order to stop dissection, you would have listened?

A. Of course."

¶ 40 On the other hand, the record appears to contain some evidence that, moments before Dr. Pera cut the artery, Dr. Rossi directed him to convert the laparoscopy to an open incision—a direction that would have required stopping the laparoscopic cutting of tissue immediately. Specifically, we refer to the following discussion between plaintiff's attorney and Dr. Rossi regarding what Dr. Rossi had stated in his discovery deposition (a discussion that plaintiff cites in his reply brief):

"Q. Now, you recall your testimony—do you recall being asked the question:

'QUESTION: The injury could have happened as much as 30 seconds after you told Dr. Pera to convert to open?'

A. I don't recall that.

Q. Respectfully, I'll refer to Page 34 of your deposition.

Did you review your deposition before today?

A. Yes, I did.

Q. 'QUESTION: So you're telling me that you do not know if Pera caused this injury after you said let's convert to open?

'ANSWER: It could have been very close to when I said it.

'QUESTION: It could have been after? Could have been before?

'ANSWER: Could have been right before. Correct.

‘QUESTION: Could it have been a minute or two after, that’s the question?

‘ANSWER: Well, not that long but it could have been some time.

‘QUESTION: Could have been 30 seconds after?

‘ANSWER: Correct.’

Do you recall that testimony?

A. I recall that two or three pages before and after that I used the word ‘instantaneous.’

Q. That’s true. You said [‘]instantaneous[’] sometimes. But also sometimes in the deposition you said you instructed Dr. Pera to convert to open as much as 30 seconds before the injury?

A. At different times of the deposition you are correct, but I stick with instantaneous.”

Dr. Rossi explained that “30 seconds to when you’re looking at the screen and looking back, that, to me, is almost instantaneous so it happened very quickly.”

¶ 41 Then there was the following exchange between plaintiff’s attorney and Dr. Rossi:

“Q. *** If you said we’re going to convert to open, that means Dr. Pera should stop cutting, right?

A. Yes, he would stop cutting, that’s correct.

Q. Now, you were his direct supervisor; isn’t that true?

A. That is correct.

Q. You agree that the standard of care requires that a resident who's supervised by an attending to obey a command to convert to open and to stop cutting, correct?

A. I would agree with that statement."

¶ 42 It does not appear that the OSF defendants made a hearsay objection to the foregoing testimony by Dr. Rossi regarding what he said in his discovery deposition. Nor does it appear that the OSF defendants requested a limiting jury instruction. "When the jury was not given any instruction regarding or limiting the use of a witness'[s] prior inconsistent statement, the jury was free to consider the witness'[s] statement as substantive evidence." (Emphasis omitted.) 1 Robert J. Steigmann, Lori A. Nicholson, and Kevin J. Born, Illinois Evidence Manual § 1:4 (4th ed. 2024). Because there was some substantive evidence that Dr. Pera cut the external iliac artery approximately 30 seconds after Dr. Rossi told him they were converting the surgery to an open incision—a direction that would have required immediately ceasing the laparoscopic cutting of tissue—the circuit court erred by directing a verdict in the OSF defendants' favor on subparagraph (B).

¶ 43 4. *Negligently Injuring the External Iliac Artery*

¶ 44 In subparagraph (D), plaintiff alleged that Dr. Pera had "[c]arelessly and negligently injured the external iliac artery." The OSF defendants argue that the circuit court was correct to enter a directed verdict in their favor on that allegation because " 'the mere fact of [an] injury' " (quoting *Teter v. Clemens*, 112 Ill. 2d 252, 258 (1986)) is not " 'evidence of lack of skill or negligence' " on his part (quoting *Lawrence v. Rubio*, 85 Ill. App. 3d 472, 477 (1980)).

¶ 45 Subparagraph (D), however, did not allege the mere fact of an injury; it alleged an injury "[c]arelessly and negligently" inflicted. Some evidence was adduced to give content to

those qualifiers. The carelessness and negligence, according to Dr. Fallas's testimony, consisted in Dr. Pera's continuing to perform the surgery laparoscopically even though the adhesions were opaque, preventing him from delineating the external iliac artery. Dr. Fallas opined that if the surgeon was not yet experienced enough that the laparoscopic instrument had become almost an extension of the surgeon's hands so that the surgeon could feel the pulse of the artery through the instrument, the standard of care required the surgeon to convert the surgical procedure to an open incision. That way, the surgeon could feel for the pulse of the artery with his or her hands and avoid cutting the artery. Arguably, given Dr. Rossi's account—or one of his accounts—that Dr. Pera cut the artery about half a minute after Dr. Rossi announced they were converting the surgery to an open incision, Dr. Pera also could be regarded as having been careless or negligent by failing to stop the laparoscopic cutting immediately.

¶ 46 Thus, it is untrue that, in subparagraph (D), plaintiff sought to hold Dr. Pera liable for the mere fact of an injury to the external iliac artery, without any evidence of how a standard of care was breached. There was evidence not only of an injury but also of a causal breach of the professional standard of care. Subparagraph (D) purported to describe the proximate result of the conduct described in subparagraphs (A) and (B), and those three subparagraphs should be taken together. Because the evidentiary record presented more than the fact of an injury, the circuit court erred by granting Dr. Pera's motion for a directed verdict on subparagraph (D).

¶ 47 B. Deleting "Injured the External Iliac Artery" From a Jury Instruction

¶ 48 At the close of plaintiff's case-in-chief, as we have discussed, the OSF defendants moved for a directed verdict in their favor and against plaintiff, and the circuit court granted the motion. Likewise, at the close of plaintiff's case-in-chief, the PSG defendants moved for a directed verdict in their favor and against plaintiff on some of his allegations against them. In

their motion for a directed verdict at the close of plaintiff's case-in-chief, the PSG defendants did not seek a directed verdict on plaintiff's allegation, in the second amended complaint, that they had "[c]arelessly and negligently injured the external iliac artery." Nor, after the close of all the evidence, did the PSG defendants move for a directed verdict on that allegation.

¶ 49 Subsequently, at the jury instruction conference, plaintiff tendered a proposed jury instruction that read as follows:

> "As to [PSG] and its employee Dr. Thomas Rossi, the plaintiff claims that decedent was injured and sustained damage, and that the defendant was negligent in one or more of the following respects:
>
> * * *
>
> (d) Injured the external iliac artery."

Counsel for the PSG defendants objected to subparagraph (d) of the proposed jury instruction because "[n]o one in this case ha[d] said that *Dr. Rossi* injured the external iliac artery" but, rather, "[e]veryone in this case agree[d] that *Dr. Pera* was manipulating the instrumentation at that time." (Emphases added.) To avoid confusing the jury in that regard, the circuit court struck subparagraph (d) from the proposed jury instruction.

¶ 50 With the phrase "Injured the external iliac artery" deleted, plaintiff's proposed jury instruction, which the circuit court ultimately gave the jury, read as follows (we quote the transcript):

> "As to [PSG] and its employee, Dr. Thomas Rossi, the plaintiff claims that defendant [*sic*] was injured and sustained damage and that the defendant was negligent in one or more of the following respects:

[A,] Allowed a resident to continue to proceed with a lysis of adhesions when they were unable to identify anatomy;

B, failed to timely scrub in;

C, failed to convert to an open procedure in a timely manner;

D, suture-ligated the external iliac artery and vein;

E, allowed Mrs. Ely to leave the operating room without diagnosing injury and suture ligation to the external iliac artery and failed to call for and/or secure a vascular surgical consult in a timely manner."

¶ 51 For essentially two reasons, plaintiff argues that, by striking subparagraph (d) from his proposed jury instruction, the circuit court abused its discretion.

¶ 52 First, plaintiff claims that the PSG defendants committed a procedural impropriety by accomplishing at the jury instruction conference what they should have tried to accomplish by a motion for a directed verdict. Plaintiff argues that, under the directed verdict statute, section 2-1202 of the Code of Civil Procedure (735 ILCS 5/2-1202 (West 2022)), "any such attempt to contest [subparagraph (d)] was waived as it was not timely motioned before the court, during the trial, or thereafter" (to quote plaintiff's brief).

¶ 53 At the jury instruction conference, though, the PSG defendants raised a timely challenge to subparagraph (d). Whether they made this challenge in the form of a motion for a directed verdict on subparagraph (d) or in the form of an objection to the inclusion of subparagraph (d) in a jury instruction made no practical difference. "[A]n objection to a jury instruction on the ground that insufficient evidence was presented on an issue to allow it to be submitted to the jury *** may constitute a sufficient approximation of a motion for a directed verdict." (Internal quotation marks omitted.) *McClaran v. Plastic Industries, Inc.*, 97 F.3d 347,

360 (9th Cir. 1996). It was the substance of the challenge that mattered, not its form or label. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002).

¶ 54 It is unclear how the merely formalistic difference caused plaintiff any prejudice. If, at trial, no evidence was presented to support the giving of a proposed jury instruction, the circuit court should refuse the instruction (see *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 100 (1995)), just as the court should grant a motion for a directed verdict on a given allegation if no evidence was presented to support that allegation (see *Krivanec v. Abramowitz*, 366 Ill. App. 3d 350, 356 (2006)). Regardless of which procedural vehicle is used—a motion for a directed verdict or an objection to a proposed jury instruction—the lack of evidence yields the same outcome: the issue does not go to the jury.

¶ 55 Second, plaintiff claims that by arguing, at the jury instruction conference, that Dr. Pera was the one "manipulating the instrumentation" that cut the external iliac artery, the PSG defendants glossed over the fact that it was under Dr. Rossi's supervision that Dr. Pera inflicted the injury. Plaintiff contends:

> "PSG/Dr. Rossi sought to untether themselves from Dr. Pera and attempt to pin sole responsibility for the injury on him despite: Dr. Rossi testified he was the captain of the ship that was primarily responsible for the procedure, he continued to let Dr. Pera operate, Dr. Rossi was right behind Dr. Pera when the injury occurred, and that he was looking at the screen. Dr. Pera even emphasized he and Dr. Rossi were performing the surgery together."

¶ 56 By recounting Dr. Rossi's testimony that "he was the captain of the ship that was primarily responsible for the procedure," plaintiff makes the point that Dr. Pera performed the surgery under Dr. Rossi's supervision. Even so, the laparoscopic scissors were wielded by Dr.

Pera, not by Dr. Rossi. The circuit court could reasonably take the view that Dr. Rossi's act of supervising a surgery in which the supervisee, Dr. Pera, accidentally injured the external iliac artery was not, as subparagraph (d) read, the infliction of an injury upon that artery by Dr. Rossi himself (or the infliction of an injury upon the artery by PSG through its employee, Dr. Rossi). Arguably, as a matter of English, failing to prevent the doctor one is supervising from cutting an artery is not the same as cutting the artery oneself. That distinction is not illogical or arbitrary. See *Blockmon v. McClellan*, 2019 IL App (1st) 180420, ¶ 41 ("A circuit court's decision on whether to give a particular jury instruction is reviewed for an abuse of discretion."); *Mogensen v. SCF Lewis & Clark Fleeting LLC*, 2025 IL App (5th) 230501, ¶ 58 ("A decision is an abuse of discretion only if it is illogical, arbitrary, or contrary to law." (Internal quotation marks omitted.)). Because it would be an "error to give an instruction not based on the evidence" (*Leonardi*, 168 Ill. 2d at 100), we find no abuse of discretion in the deletion of subparagraph (d) from plaintiff's proposed jury instruction (see *Blockmon*, 2019 IL App (1st) 180420, ¶ 41).

¶ 57 C. Abandonment of Allegations

¶ 58 In his amended complaint (as distinct from his second amended complaint), plaintiff alleged that OSF was vicariously liable for Dr. Rossi's alleged negligence because Dr. Rossi was an agent, apparent agent, or employee of OSF. Also, in his amended complaint, plaintiff claimed a lack of informed consent:

> "[OSF], by and through their agent, apparent agent and/or employee, Thomas R. Rossi, M.D., had a duty to disclose material information and risks to Plaintiff's decedent in connection with the attempted laproscropy on September 19, 2019, including but not limited to Dr. Pera, a resident, being delegated this procedure on a patient with radiation injuries, being primary on this procedure and/or

performing the procedure rather than Dr. Rossi who was not scrubbed in, as well as risk to the external iliac artery."

Plaintiff further alleged, in his amended complaint, that, as a result of Dr. Rossi's failure to make those disclosures, "Plaintiff [*sic*] consented to treatment that she otherwise would not have agreed to and was injured by said treatment that resulted in her death."

¶ 59 OSF moved for a partial summary judgment in its favor and against plaintiff on the issue of whether Dr. Rossi was OSF's agent, apparent agent, or employee. The circuit court granted the motion.

¶ 60 Also, all the defendants moved for partial summary judgments in their favor and against plaintiff on the issue of whether Victoria L. Ely had given her informed consent to allowing a resident, Dr. Pera, to be the primary surgeon. The circuit court granted those motions as well.

¶ 61 After the circuit court granted the motions for a partial summary judgment, plaintiff moved for permission to file a second amended complaint. The court gave him permission to do so.

¶ 62 On September 18, 2023, plaintiff filed his second amended complaint. Therein, he alleged that Dr. Pera was an agent, apparent agent, or employee of OSF and that Dr. Rossi was an agent, apparent agent, or employee of PSG. In this new version of the complaint, however—in the second amended complaint—plaintiff did not allege that Dr. Rossi was an agent, apparent agent, or employee of OSF. Nor did plaintiff allege, in the second amended complaint, that Dr. Rossi committed a negligent omission by failing to obtain Victora L. Ely's informed consent to allow a resident to be the primary surgeon.

¶ 63 On appeal, plaintiff contends that the circuit court erred by granting the motions for a partial summary judgment on those issues, *i.e.*, whether Dr. Rossi was an agent, apparent agent, or employee of OSF and whether Dr. Rossi obtained Victoria L. Ely's informed consent.

¶ 64 The trouble is this: those motions, the granting of which plaintiff challenges on appeal, sought partial summary judgments on allegations in the *amended complaint*, a version of the complaint that subsequently was superseded by the *second amended complaint*. The OSF defendants note that, in the second amended complaint, plaintiff did not allege that (1) Dr. Rossi was OSF's agent, apparent agent, or employee or (2) he breached a standard of care by failing to obtain Victoria L. Ely's informed consent. Given those pleading revisions (or omissions), the OSF defendants argue that, under *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 153-54 (1983), plaintiff has waived his contention that the circuit court erred by granting the motions for a partial summary judgment on those two issues. Those issues were defunct, the OSF defendants argue, because although those issues were raised in the amended complaint, they were not subsequently raised in the second amended complaint, the superseding version of the complaint. A defendant has the right to receive fair notice, in the current version of the complaint, of what allegations the defendant will have to defend against at trial. The principle of waiver in *Foxcroft* is calculated to protect that right to fair notice. See *Webber v. Zimmerlein*, 2025 IL App (3d) 240157-U, ¶ 36.

¶ 65 In his reply brief, plaintiff counters that it is defendants who have accomplished a waiver by failing to raise the *Foxcroft* rule in the proceedings below. Citing *People ex rel. Department of Transportation v. Greatbanc Trust Co.*, 2018 IL App (1st) 171315, ¶ 13, plaintiff observes, "It is a well-established principle of appellate practice that contentions not raised in the trial court are waived and may not be raised for the first time on appeal." *Greatblanc*, however,

applied that principle to *appellants*. The defendant in *Greatblanc* argued "that appellants waived their contentions on appeal by failing to raise any of them in the trial court," and the appellate court agreed. *Id.* ¶ 12.

¶ 66 *Greatblanc* is distinguishable because, in the present case, plaintiff is the appellant whereas the OSF defendants are appellees. "It is well established that the appellee may urge any point in support of the judgment on appeal, even though not directly ruled on by the trial court, so long as the factual basis for such point was before the trial court." (Internal quotation marks omitted.) *Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶ 31. The second amended complaint was before the circuit court. Therefore, as appellees, the OSF defendants may note what was left out of the second amended complaint and may argue, on the basis of such omissions, a waiver or abandonment of issues under *Foxcroft*. See *id.*

¶ 67 We decide *de novo* whether the second amended complaint implicated the *Foxcroft* rule. See *Bonhomme v. St. James*, 2012 IL 112393, ¶ 17. That rule—which "applies not only to factual allegations, but also to theories of recovery" (*Bilut v. Northwestern University*, 296 Ill. App. 3d 42, 46 (1998))—is as follows: "When a complaint is amended, without reference to the earlier allegations, it is expected that these allegations are no longer at issue." *Foxcroft*, 96 Ill. 2d at 154.

¶ 68 There are three ways of preventing this inference of abandonment:

> "First, a party can stand on the dismissed counts, take a voluntary dismissal of any remaining counts, and argue the matter at the appellate level. [Citation.] Second, a party can file an amended pleading that realleges, incorporates by reference, or refers to the dismissed counts. [Citation.] A 'simple paragraph or footnote' is sufficient for this purpose. [Citation.] Third, a party can perfect an appeal from

the dismissal order prior to filing an amended pleading that does not refer to or adopt the dismissed counts." *Gaylor v. Campion, Curran, Rausch, Gummerson & Dunlop, P.C.*, 2012 IL App (2d) 110718, ¶ 36.

¶ 69 Such an antiwaiver measure is required not only after the dismissal of a pleading but also after a summary judgment. The *Foxcroft* rule applies to amended complaints filed after summary judgments. See *Gilley v. Kiddel*, 372 Ill. App. 3d 271, 274 (2007). In *Bilut*, for example, the appellate court held, on the authority of *Foxcroft*, that the plaintiff "ha[d] waived her right to appeal from the entry of summary judgment on" three counts "of the first amended complaint because she failed to reallege those counts in her second amended complaint." *Bilut*, 296 Ill. App. 3d at 46.

¶ 70 Similarly, it does not appear that, with respect to the theories that Dr. Rossi was OSF's actual or apparent agent or that he failed to obtain Victoria L. Ely's informed consent, plaintiff took any of the preservative measures in *Gaylor* after the circuit court granted motions for a partial summary judgment against plaintiff on those theories. Consequently, on appeal, we deem those theories to have been abandoned. See *Bonhomme*, 2012 IL 112393, ¶ 17; *Foxcroft*, 96 Ill. 2d at 154; *Gilley*, 372 Ill. App. 3d at 274; *Bilut*, 296 Ill. App. 3d at 46.

¶ 71 D. Impeachment of Dr. Rossi

¶ 72 At trial, there was the following discussion between plaintiff's attorney and Dr. Rossi—a discussion interrupted by an objection and a ruling thereon:

"Q. There were two units of blood ready for [Victoria L. Ely] in the blood bank prior to the surgery, correct?

A. That is correct.

Q. They were typed and crossed and ready to go, correct?

A. To my understanding.

Q. How long does it take for blood products to get to the OR from the blood bank?

[ATTORNEY FOR THE OSF DEFENDANTS]: Objection; speculation.

THE COURT: You can ask if he knows.

BY THE WITNESS:

A. I have no knowledge of that."

¶ 73 Plaintiff's attorney then prepared to impeach Dr. Rossi with his deposition testimony from a different case, *Anderson v. OSF Healthcare System*, Tazewell County case No. 17-L-88. When plaintiff's attorney called out the page and line numbers of the deposition, the attorney for the OSF defendants objected, prompting a sidebar conference.

¶ 74 In his deposition from *Anderson* (it emerged in the sidebar conference), Dr. Rossi was asked, "If blood is needed in an OR as of December 2016 on an emergent basis, how long does it take to transport it from the blood bank to the individual OR?" Dr. Rossi answered, "I would think somewhere around 5 to 10 minutes would be my guess." Later in his deposition, Dr. Rossi was asked, "And you would expect if a call has been made let's say at 9:30, [']I'd like a couple of units of red blood cells,['] you would expect it to be in OR in 5 to 10 minutes?" Dr. Rossi answered, "Plus or minus if it's urgent, yes." That deposition testimony, plaintiff's attorney argued, was inconsistent with Dr. Rossi's trial testimony that he had "no knowledge of" "[h]ow long it take[s] for blood products to get to the OR from the blood bank."

¶ 75 The attorney for the OSF defendants objected to the proposed impeachment because, in the passages in question from the *Anderson* deposition, "it was not a massive

transfusion protocol" that Dr. Rossi was testifying about. Instead, in the *Anderson* deposition, Dr. Rossi was answering the question of "how long it would take two units of previously typed and cross-matched blood to arrive in an OR."

¶ 76 In response to that objection, plaintiff's attorney clarified, "I am not inquiring of [Dr. Rossi] particularly about a massive transfusion protocol. I am asking him about two units of packed red blood cells that he just said were up there [for Victoria L. Ely] in the blood bank."

¶ 77 Given that clarification, the attorney for the OSF defendants then objected, "[Plaintiff's] experts doesn't [*sic*] say that two units should have been released immediately. His expert is opining about a mass transfusion protocol, massive volume of blood products being sent to the OR."

¶ 78 At first, plaintiff's attorney responded to that objection by insisting:

> "My expert specifically does opine that two units of typed and cross-matched blood should have been released in a more timely manner.
>
> I'm trying to establish how long it would have, should have, could have taken to get there. Five to ten minutes is what Dr. Rossi said in this other case under oath.
>
> It is directly applicable and, respectfully, I would like to be able to ask that question."

The circuit court asked plaintiff's attorney, "[A]re you representing to the court that your expert is tendering an opinion regarding these two units that we're talking about?" *Id.* Plaintiff's attorney answered:

"Absolutely, sir. He specifically said that they should have been released immediately and they should not have waited for the entire massive transfusion protocol, all of those blood products to be released. He specifically said those two units should have been released timely. He says it in his disclosure. He says it in the [deposition]. He says it all over."

¶ 79 The attorney for the OSF defendants cautioned, "I don't see anywhere in his disclosure where his expert was disclosed on this idea that a mass transfusion protocol requires taking the first two units that had been previously cross-matched and sending them ahead of the rest of the products. That is not in the disclosure anywhere." He suggested, "Perhaps you can point me to that." The circuit court added, "I would be interested in whether or not that is in the disclosure." "It doesn't say anything in here about it," the attorney for the OSF defendants remarked.

¶ 80 Then there was the following exchange between plaintiff's attorney and the attorney for the OSF defendants:

"[PLAINTIFF'S ATTORNEY]: Allow me to provide clarity on it.

[ATTORNEY FOR THE OSF DEFENDANTS]: I have your disclosure right here and you represented that it was in here and it is not in here.

[PLAINTIFF'S ATTORNEY]: Let me find it and let me also find where it's cited in his deposition.

[ATTORNEY FOR THE OSF DEFENDANTS]: Dr. [Darrell J.] Tri[ulzi] never testified that it was a breach of the standard of care to not have sent the first two units ahead. That is not an opinion that was offered and there is no testimony provided.

[PLAINTIFF'S ATTORNEY]: I don't see it in the disclosure so I apologize for the misrepresentation. I was incorrect."

¶ 81 Consequently, the circuit court ruled, "Given the fact there is no disclosure on it, I think it is outside any proper questioning and I don't find that it is relevant to these proceedings. I don't think there is any claims based upon those two units." Accordingly, the court ordered, "Before the jury comes in, strike the last question and any response that was given."

¶ 82 On appeal, plaintiff contends that the circuit court abused its discretion by refusing to allow him to impeach Dr. Rossi with his deposition testimony from *Anderson*. See *Thornhill v. Midwest Physician Center of Orland Park*, 337 Ill. App. 3d 1034, 1047 (2003) ("The circuit court has discretion to allow the admission of evidence for attempted impeachment purposes and a reviewing court will not disturb that decision absent an abuse of discretion."). Plaintiff argues along these lines. Although Dr. Rossi testified, at trial, that he did not know how long it took for blood products to get from the blood bank to the OR, his deposition testimony from *Anderson* revealed that he had such knowledge: he testified in his deposition that it took approximately 5 to 10 minutes. "The credibility of a witness may be tested by demonstrating that on an occasion prior to trial, the witness made statements that are inconsistent with those made at trial." *Krklus v. Stanley*, 359 Ill. App. 3d 471, 488 (2005). Plaintiff continues that, despite this contradiction between Dr. Rossi's trial testimony and his deposition testimony, "[d]efense counsel *** attempted to dissuade the court from allowing this testimony by confining the case to 'massive transfusion protocol.' " According to Dr. Rossi's trial testimony, however, "he requested stat blood initially" and then requested a massive transfusion protocol. Because Dr. Rossi requested blood stat first, before requesting a massive transfusion protocol, and because

the two units were available stat, plaintiff maintains "it was error to preclude impeachment under the guise that *Anderson* didn't involve massive transfusion protocol."

¶ 83 The weakness of that argument is that it fails to address the circuit court's rationale for sustaining the objection to the proposed impeachment. The rationale was twofold. First, plaintiff's attorney clarified, in the sidebar conference, that when asking Dr. Rossi how long it took for blood products to get from the blood bank to the OR, he was "not inquiring *** particularly about a massive transfusion protocol" but, instead, was "asking him about two units of packed red blood cells that he just said were up there [for Victoria L. Ely] in the blood bank." Second, plaintiff's attorney admitted that, in his pretrial disclosures, there was no expert opinion that the standard of care required sending the two units to the OR ahead of the rest of the blood needed for a massive transfusion protocol. It appears to be undisputed that such an expert opinion would have been necessary because the standard of care in that respect was beyond "the common knowledge of a layperson." *Gulino v. Zurawski*, 2015 IL App (1st) 131587, ¶ 60. Illinois Supreme Court Rule 213(f) (eff. Jan. 1, 2018) requires that, "[u]pon written interrogatory," a party is to provide certain information regarding expert witnesses. "For each controlled expert witness—a term defined to include "the party's retained expert"—"the party must identify" (among other information) "the conclusions and opinions of the witness and the bases therefor." Ill. S. Ct. R. 213(f)(3) (eff. Jan. 1, 2018). Rule 213(g) provides that "[t]he information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition, limits the testimony that can be given by a witness on direct examination at trial." Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2018).

¶ 84 Because of that limiting provision in Rule 213(g), the circuit court could have reasonably taken the view that the question of how long it took for two units of typed and

cross-matched blood to get from the blood bank to the OR was unimportant to the legitimate issues in the case. There was no expert testimony—nor, on direct examination, could plaintiff present any expert testimony (see *id.*)—that the standard of care required sending the two units to the OR ahead of the rest of the blood needed for a massive transfusion protocol. Thus, it did not matter how long it took for two previously prepared units of blood to get from the blood bank to the OR, and the prior inconsistent statement would have served no purpose other than contradicting Dr. Rossi.

¶ 85 In the proposed impeachment of a witness by a prior inconsistent statement, contradiction merely for the sake of contradiction is not allowed. See *People v. Pumphrey*, 51 Ill. App. 3d 94, 99 (1977). "For deposition testimony to be admissible for impeachment, that testimony must contradict an in-court statement of the witness *on a material matter*," that is, a matter "involv[ing] facts relative to some issue in the case under the pleadings." (Emphasis added.) *Schiff v. Friberg*, 331 Ill. App. 3d 643, 656 (2002). "The test to determine whether a matter is collateral is whether it could be introduced for any purpose other than to contradict." *People v. Fonza*, 217 Ill. App. 3d 883, 887-88 (1991). Plaintiff identifies no purpose other than contradicting Dr. Rossi. "A witness may not be impeached as to collateral, irrelevant, or immaterial matters." *Needy v. Sparks*, 51 Ill. App. 3d 350, 371 (1977). Because "[t]he impeaching testimony sought to be admitted was not relevant to issues in the case[ ] but rather was sought merely for the purpose of contradicting the witness" (*id.* at 372), we find no abuse of discretion in the sustaining of the OSF defendants' objection to the attempted impeachment (see *Thornhill*, 337 Ill. App. 3d at 1047).

¶ 86 E. Impeachment of Dr. Bipan Chand

¶ 87 1. *Sabiston Textbook of Surgery*

¶ 88 At trial, the PSG defendants called, as an expert witness, Dr. Bipan Chand, who was a general surgeon. He opined that, in the first surgery upon Victoria L. Ely, Dr. Rossi met the standard of care. Specifically, according to Dr. Chand, it was in conformance with the standard of care for Dr. Rossi to suture-ligate the injured external iliac artery to prevent Victoria L. Ely from bleeding to death. On that subject, there was the following dialogue between Dr. Chand and the attorney for the PSG defendants:

"Q. Did Dr. Rossi appropriately and [*sic*] meet the standard of care in terms of controlling the bleed?

A. He did.

Q. And can you explain to the jury the basis for that opinion.

A. Yes.

So depending on the type of bleed, the location of the bleed, and really the size of the opening, there's different ways to manage that.

So suture-ligating, which literally means taking that blue stitch and putting a material into the blood vessel, was appropriate for controlling the bleeding.

* * *

Q. Under the circumstances, did the standard of care require Dr. Rossi to identify the specific vessels that were involved in this bleed?

A. No. At the time of a major bleed, the goal is to stop the bleeding at that time.

Q. Okay. Under those circumstances, does one have the luxury of doing sort of an encyclopedic inventory of the anatomy?

A. No, you do not.

Q. Did the standard of care require any different kind of suturing to control that bleeding?

A. No, it does not.

* * *

Q. Did Dr. Rossi in any way breach the standard of care in suture-ligating the iliac vein or artery?

A. He did not.

Q. Is the inadvertent ligation of the iliac vein an indication of negligence on the part of Dr. Rossi?

A. It is not."

¶ 89 On cross-examination by plaintiff's attorney, Dr. Chand acknowledged having testified in his deposition "that [Sabiston Textbook of Surgery (Sabiston's)] was a useful textbook." Dr. Chand also acknowledged that Dr. Rossi, in his deposition, had characterized "Sabiston's" as "authoritative." While Dr. Chand regarded "Sabiston's" as a "useful textbook" and "a good book that you use sometimes," he disagreed that it was "authoritative."

¶ 90 Later, on cross-examination, when questioning Dr. Chand regarding the suture-ligation of the external iliac artery, plaintiff's attorney had the following dialogue with him:

"Q. Now, you testified earlier that Sabiston's was a good book; correct?

A. Yes.

Q. Now, I have a copy of the 20th edition of Sabiston's that was published in 2017, the most up-to-date version prior to this occurrence.

When was the last time you reviewed Sabiston's?

[ATTORNEY FOR THE PSG DEFENDANTS]: Object to the relevance of

this. I don't think—this doctor has not laid a foundation for this.

THE COURT: Sustained."

¶ 91 On appeal, plaintiff informs us, by citation to plaintiff's exhibit No. 30, that "Sabiston's" is a textbook on surgery: Courtney V. Townsend, Jr., Daniel Beauchamp, B. Mark Evers, and Kenneth L. Mattox, eds., Sabiston Textbook of Surgery: The Biological Basis of Modern Surgical Practice (20th ed. 2017). Plaintiff directs our attention to the following passage that appears in chapter 63, titled "Vascular Trauma," under the heading of "Abdominal Vascular Injury":

> "Injuries to the common and external iliac arteries are initially controlled with digital pressure to allow proximal and distal control of the vascular clamps or vessel loops. Injuries to the common and external iliac arteries may be repaired primarily but will often require a synthetic interposition graft. The common and external iliac arteries should never be ligated. If a patient is hemodynamically unstable, these injuries should be shunted and repaired in a delayed fashion. However, injuries to the internal iliac artery can be routinely ligated." *Id.* at 1816.

Plaintiff (who, at trial, made an offer of proof on that passage) explains that he intended to impeach Dr. Chand with the teaching in Sabiston that "The common and external iliac arteries should never be ligated." *Id.* According to plaintiff, the circuit court abused its discretion by sustaining the PSG defendants' objection to this attempted impeachment. See *Thompson v. Abbott Laboratories*, 193 Ill. App. 3d 188, 205 (1990).

¶ 92 For two reasons, the PSG defendants maintain that, by sustaining their objection to the attempted impeachment of Dr. Chand by a contrary opinion in Sabiston, the circuit court did not abuse its discretion.

¶ 93 First, the PSG defendants argue that "[p]laintiff sought to introduce an excerpt dealing specifically with vascular surgery, *not* general surgery," and Dr. Chand was board-certified only in general surgery. (Emphasis in original.) According to the PSG defendants, "Dr. Chand was testifying to his opinions on the standard of care for general surgery, not vascular surgery." They maintain that "using the Sabiston excerpt on cross[-]examination would have prejudiced the defense by suggesting that defendants' actions were to be judged according to the standard of care for vascular surgeons," thereby "[misleading] the jury and risk[ing] confusion of the issues."

¶ 94 This argument seems to be another way of saying that there was no genuine contradiction between Dr. Chand's testimony and Sabiston because Dr. Chand testified to the standard of care for general surgeons whereas Sabiston discussed the standard of care for vascular surgeons. At the cited page of Sabiston, however, there appears to be no mention that the standard of care described on that page applies only to board-certified vascular surgeons. Sabiston does not appear to say that if the surgeon is a general surgeon, ligating the external iliac artery is acceptable. That the cited page of Sabiston applies only to vascular surgeons appears to be merely an assertion by the PSG defendants in their brief, an assertion without any apparent textual basis in Sabiston. It seems to us that, without mentioning board-certification or practice specialty, the cited page of Sabiston simply describes what to do when repairing an injury to the external iliac artery—a task that Dr. Rossi performed.

¶ 95 By suture-ligating the external iliac artery, Dr. Rossi performed vascular surgery, the subject of chapter 63 of Sabiston. Surely, if, instead, Dr. Rossi had performed brain surgery on Victoria L. Ely and had done so poorly, he could not afterward reasonably argue, in his own

defense, that brain surgery was outside his purview because he was board-certified only in general surgery.

¶ 96 In any event, according to Dr. Rossi's testimony, vascular surgery was indeed within his purview. He specifically testified that, as a general surgeon working in "trauma," vascular surgery was within his "purview" and that, between 2001 and 2011, he performed "somewhere between six and 12" "vascular procedures per year." In fact, it was he who had trained OSF's vascular surgeon, Dr. Patel, in vascular surgery. In his testimony and practice, therefore, Dr. Rossi presented himself as qualified to perform vascular surgery, and he cannot fairly contradict his own self-presentation.

¶ 97 An analogous logic applies to Dr. Chand's testimony as an expert witness. Although, like Dr. Rossi, Dr. Chand was board-certified only in general surgery, he opined on a vascular surgical procedure, thereby presenting himself as qualified to give that opinion. He opined that, by suture-ligating the internal iliac artery, Dr. Rossi met the applicable standard of care. After Dr. Chand gave that expert opinion, he could hardly expect, by reason of his limited board-certification, to be immune to impeachment by a contrary authority. We are aware of no case holding that an expert witness must have a relevant board-certification or a particular set of qualifications before the witness may be impeached by the use of a learned treatise. If Dr. Chand was good enough to give an opinion on vascular surgery, he was good enough to be impeached by an authoritative treatise on vascular surgery. The prerequisites for impeachment by a learned treatise are merely that the witness gave an expert opinion and an authoritative source contains a contrary opinion. See *Stapleton ex rel. Clark v. Moore*, 403 Ill. App. 3d 147, 158 (2010); Edward J. Imwinkelried, Rationalization and Limitation: The Use of Learned Treatises to Impeach Opposing Expert Witnesses, 36 Vt. L. Rev. 63, 77-78 (2011) ("[T]he publication has

considerable probative value on the issue of the witness's credibility" because "the witness rejected contrary authorities without good reason.").

¶ 98 The second reason why, according to the PSG defendants, the circuit court did not abuse its discretion by sustaining their objection to using Sabiston to impeach Dr. Chand is that plaintiff failed to lay a foundation for the impeachment by proving that Sabiston was authoritative.

¶ 99 "[C]ross-examination of an expert with reference to a recognized text or treatise is proper where either the court has taken judicial notice of the author's competence [citation] or, absent concession by the witness, the cross-examiner proves the text or treatise is authoritative." (Internal quotation marks omitted.) *Stapleton*, 403 Ill. App. 3d at 158. Dr. Chand agreed that Dr. Rossi had testified that Sabiston was authoritative. Although Dr. Chand himself declined to characterize Sabiston as "authoritative"—although he balked at using that word—he nevertheless indicated, in so many words, that Sabiston was authoritative by characterizing it as "a good book" and as a "useful textbook." It has been held that

> "an expert may not foreclose full cross-examination by the semantic trick of announcing that he or she does not find a text authoritative when the witness has already relied upon the text and testified that he or she agrees with much of it. An expert's careful avoidance of the words 'reliable' and 'authoritative' will not foreclose opposing counsel from impeaching him or her with medical literature if the expert implicitly acknowledges that the literature is reliable or authoritative." 32 C.J.S. Evidence § 998 (May 2025 Update).

Granted, the record appears to contain no indication that Dr. Chand relied on Sabiston when forming the opinion he gave in this case. He agreed, however, that Sabiston was a good and

useful textbook, and "[t]here is no requirement that adverse witnesses clearly concede that the te[x]t is 'authoritative.' " *Fragogiannis v. Sisters of St. Francis Health Services, Inc.*, 2015 IL App (1st) 141788, ¶ 28. "Instead, recognition that a text is 'standard,' 'well-respected,' 'a very good book,' a 'standard book,' and 'a good source' are indications that the text is authoritative." *Id.* (quoting *Bowman v. University of Chicago Hospitals*, 366 Ill. App. 3d 577, 587 (2006)). No meaningful distinction can be drawn between Dr. Chand's characterizations of Sabiston as a "good book" and "useful textbook" and the proxy words for "authoritative" that the appellate court listed in *Fragogiannis*. See *id.*

¶ 100 We conclude, therefore, that the circuit court abused its discretion by refusing to allow plaintiff to use Sabiston for the impeachment of Dr. Chand. While we do not question Dr. Chand's knowledge or integrity, we are concerned that, generally, the refusal to allow expert witnesses to be impeached by authoritative treatises can only exacerbate "[t]he unsatisfactory quality of expert testimony" that has long "been the subject of frequent comment." *Darling v. Charleston Community Memorial Hospital*, 33 Ill. 2d 326, 335 (1965). The supreme court reasoned in *Darling*:

> "An individual becomes an expert by studying and absorbing a body of knowledge. To prevent cross-examination upon the relevant body of knowledge serves only to protect the ignorant or unscrupulous expert witness. In our opinion expert testimony will be a more effective tool in the attainment of justice if cross-examination is permitted as to the views of recognized authorities, expressed in treatises or periodicals written for professional colleagues." *Id.* at 336.

Cross-examination on the views of recognized authorities should be liberally allowed. Barring

the use of Sabiston for that purpose, especially after Dr. Rossi himself described Sabiston as authoritative, was an abuse of discretion. See *Thompson,* 193 Ill. App. 3d at 205.

¶ 101 Even so, plaintiff has not carried his burden of showing "substantial prejudice" from this ruling. *Fellows v. Barajas,* 2020 IL App (3d) 190388, ¶ 16. Dr. Fallas was critical not so much of Dr. Rossi's act of sewing the external iliac artery shut to prevent the decedent from bleeding to death on the operating table. He was more critical of the failure to promptly call a vascular surgeon and the removal of the decedent from the OR with her external iliac artery still sewn shut. We conclude, therefore, that erroneously forbidding the impeachment of Dr. Chand by Sabiston was harmless. See *id.*

¶ 102 2. *Dr. Chand's Evaluation of Dr. Rossi's Credibility*

¶ 103 On cross-examination, plaintiff's attorney and Dr. Chand had the following discussion:

> "Q. You agree that in your deposition, you testified that as a medicolegal examiner, that you view part of your role as weighing the credibility of the witnesses.
>
> A. Yes, I agree with that.
>
> Q. And you testified that you believe Dr. Rossi was credible; correct?
>
> A. Yes.
>
> Q. And you agreed that Dr. Rossi was unable to tell us how long he was in Tiger Country; correct?"

At that point, the attorney for the PSG defendants objected.

¶ 104 The circuit court told the jury to take a break while the attorneys and the court went into chambers and discussed the objection. In chambers, the court noted that there was an

order *in limine* barring the parties from asking witnesses to evaluate the credibility of other witnesses. The court ruled as follows: "Keeping an open mind as to your further examination of this witness, I'm going to sustain the objection, strike the response to *** those questions regarding credibility, and admonish you not to proceed into areas covered by motions *in limine*." But see Ill. R. Evid. 103(b)(3) (eff. Oct. 15, 2015) ("In civil trials, even if the court rules before or at trial on the record concerning the admission of evidence, a contemporaneous trial objection or offer of proof *must* be made to preserve a claim of error for appeal." (Emphasis added.)).

¶ 105 On appeal, plaintiff complains that, by that ruling, the circuit court "precluded him from" "illuminating the numerous versions of events in Dr. Rossi's deposition as to the amount of time he and Dr. Pera were in 'tiger country' unable to visualize anatomy."

¶ 106 We disagree that the circuit court's ruling had that effect. All the court did was prohibit plaintiff's attorney from asking Dr. Chand whether he thought that Dr. Rossi was credible. That prohibition had a solid basis in Illinois case law. See *People v. Kokoraleis*, 132 Ill. 2d 235, 264 (1989) ("[I]t is generally improper to ask a witness on cross-examination whether an adverse witness'[s] testimony is truthful. [Citations.] Questions of credibility are to be resolved by the trier of fact."); *People v. Boling*, 2014 IL App (4th) 120634, ¶ 121 ("Because questions of credibility are to be resolved by the trier of fact [citation], it is generally improper to ask one witness to comment directly on the credibility of another witness." (Internal quotation marks omitted.)).

¶ 107 Granted, in striking the credibility-related questions and answers, the circuit court appeared to additionally strike the final question, for which the credibility-related questions had been a preparation: "And you agreed that Dr. Rossi was unable to tell us how long he was in Tiger Country; correct?" It is unclear, though, how the striking of that question could be

reasonably criticized, considering that Dr. Chand should not have been asked to speculate on Dr. Rossi's abilities and inabilities to "tell us" something. See *Damron v. Micor Distributing, Ltd.*, 276 Ill. App. 3d 901, 907 (1995) ("Put simply, an expert witness'[s] opinion cannot be based on mere conjecture and guess.") Therefore, in this evidentiary ruling, we find no abuse of discretion. See *Enbridge Energy (Illinois), L.L.C. v. Kuerth*, 2016 IL App (4th) 150519, ¶ 90 ("[R]eviewing courts will not disturb a trial court's evidentiary rulings absent an abuse of discretion.").

¶ 108 3. *An Error in the Operative Report*

¶ 109 At trial, plaintiff's attorney and Dr. Pera had the following discussion about a mistake in the operative report:

> "Q. Now, do you agree that in the hour or so after completing that lysis adhesion surgery with Mr. [*sic*] Ely, you submitted an operative report indicating that Dr. Rossi was present and scrubbed for the entirety of the surgery?
>
> A. I inadvertently wrote that, yes, sir.
>
> Q. Now, you agree that that was inaccurate?
>
> A. I do, yes, sir."

¶ 110 Later in the trial, plaintiff's attorney had the following dialogue with Dr. Chand:

> Q. Do you agree that accurate charting is the standard of care?
>
> A. Yes.
>
> Q. Do you agree that Dr. Pera included a falsehood in his operative report?"

The attorney for the PSG defendants objected on the ground of irrelevancy, and the circuit court sustained the objection.

¶ 111 On appeal, plaintiff contends that the circuit court thereby erred. On the authority

of Illinois Rule of Evidence 703 (eff. Jan. 1, 2011) ("Bases of Opinion Testimony by Experts"), plaintiff argues that "[t]his line of questioning should have been allowed given that an expert is allowed to opine about documents made known to him or her before the hearing."

¶ 112 It is unclear how that rule relates to the question "Do you agree that Dr. Pera included a falsehood in his operative report?" Illinois Rule of Evidence 703 provides as follows:

> "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence." *Id.*

Plaintiff does not explain which opinion by Dr. Chand was based on Dr. Pera's inclusion of a falsehood in his operative report. It is true that Dr. Chand opined that "accurate charting is the standard of care." It appears, though, that Dr. Chand based that opinion on his own knowledge of the standard of care, not on the inaccuracy in Dr. Pera's operative report. Nor does plaintiff explain how it was relevant whether Dr. Chand agreed to the existence of an inaccuracy in Dr. Pera's operative report—an inaccuracy that Dr. Pera already had acknowledged. Therefore, we find no abuse of discretion in this evidentiary ruling. See *Enbridge*, 2016 IL App (4th) 150519, ¶ 90. Besides, even if the court erred in this respect, the error was harmless. See *Fellows*, 2020 IL App (3d) 190388, ¶ 16.

¶ 113 F. Dr. Fallas's Curriculum Vitae

¶ 114 Plaintiff represents that, during closing arguments, "defense counsel put up a PowerPoint that minimized Dr. Fallas'[s] credentials in comparison to Dr. Chand" and then, when plaintiff "attempted to correct this alleged disparity between Dr. Fallas and Dr. Chand," the

circuit court "tacitly accused Plaintiff of supplementing evidence in the presence of the jury and then precluded the jury from evaluating the credentials of Dr. Fallas."

¶ 115 The pages of the transcript that plaintiff cites in this context do not appear to explicitly state that "defense counsel put up a PowerPoint" during his closing argument. Nevertheless, it could be inferred that defense counsel did so, given his remark to the jury that he "misspelled" a name and his reference to "bullet points."

¶ 116 During his rebuttal closing argument, plaintiff's attorney began discussing Dr. Fallas's qualifications but was interrupted by an objection to his intended use of Dr. Fallas's curriculum vitae (CV):

> "Now, [the attorney for the PSG defendants] kind of put up a lopsided view of the resume of Dr. Fallas and Dr. Rossi. Now, I would have objected, rule of completeness.
>
> Dr. Fallas has an esteemed career. He's been—
>
> [ATTORNEY FOR THE PSG DEFENDANTS]: I object to the introduction of evidence that was not produced by the witness on the stand.
>
> THE COURT: You know that you can't supplement evidence.
>
> [PLAINTIFF'S ATTORNEY]: Well, respectfully, his CV has been moved into evidence, Your Honor.
>
> [ATTORNEY FOR THE PSG DEFENDANTS]: His CV is maybe part of the record. It is not going to the jury. It is a matter of listening to expert testimony.
>
> [PLAINTIFF'S ATTORNEY]: Respectfully, Your Honor, the exhibit is in evidence. I'd be happy to publish it to the jury.
>
> THE COURT: Parties approach.

(Whereupon, proceedings were held off the record at sidebar.)

[PLAINTIFF'S ATTORNEY]: Okay. So what we did hear during the course of Dr. Fallas's testimony was that he was hired right out of medical school by the person who invented the laparoscopic procedure."

Thus, at the conclusion of the sidebar conference—of which there is no transcription—plaintiff's attorney resumed his rebuttal closing argument, summarizing Dr. Fallas's qualifications as they were "hear[d] during the course of Dr. Fallas's testimony."

¶ 117 After closing arguments, when the circuit court released the jury for the day, plaintiff's attorney made the following offer of proof:

"[PLAINTIFF'S ATTORNEY]: Okay. So briefly, Your Honor, the offer of proof that I would like to make is as to the CV of Dr. Moses Fallas that I intended to go through during closing argument, my position is that this was in evidence stipulated to by defense counsel. It was also published to the jury during the direct examination of Dr. Fallas, as I recall. And we've gone through the CV, the content of it.

And I will not repeat the content of it, but I will refer to the exhibit. It is Plaintiff's Exhibit 5 that is in evidence."

¶ 118 The attorney for the PSG defendants responded:

"The objection was it's essentially hearsay. There are a lot of exhibits that were admitted. That doesn't mean that they're just free game for closing argument.

So, for instance, the OSF record is an exhibit. It's 1,042 pages long. No one here would suggest that I could get up there in my closing and flip to page

1,041, which is an [electrocardiogram], and start interpreting it in front of the jury. That requires testimony laying a foundation for what it says.

And, by the same token, if counsel wanted that information in front of the jury, it was their obligation to have it teased out by Dr. Fallas in a setting where I would have a chance to examine him about it."

¶ 119 The circuit court then decided, "Ruling stands."

¶ 120 The PSG defendants argue that this offer of proof is insufficient because (1) "Dr. Fallas did not testify to [the] entirety [of his CV] during his direct examination" and (2) "[t]he offer of proof failed to set forth what portions of Dr. Fallas's CV the plaintiff intended to rely upon during closing argument." According to the PSG defendants, the "broadly general offer of proof indicat[ed] only that the plaintiff's counsel intended to refer to the CV as a whole—something he was allowed to do, without displaying it to the jury." The PSG defendants point out that, under *People v. Wallace*, 331 Ill. App. 3d 822, 831 (2002), "an offer of proof is sufficiently specific only if it adequately demonstrates to the court what the evidence would be, allowing a court of review to assess the prejudice allegedly stemming from the exclusion."

¶ 121 Plaintiff's attorney explained that he had "intended to go through" "the CV of Dr. Moses Fallas" "during closing argument." The offer of proof was sufficiently specific. The CV, plaintiff's exhibit No. 5, is in the record, and all one must do is read this four-page exhibit to ascertain what "go[ing] through" it would entail. "Go[ing] through" the CV entailed more than "refer[ring] to the CV as a whole."

¶ 122 In his closing argument, plaintiff's attorney should not have been limited to the portions of the CV that had been "teased out by" Dr. Fallas's testimony. It is true that just because a document is in the record, it does not necessarily follow that the document can be

argued to the jury. Not only was Dr. Fallas's CV in the record, however, but it had been admitted into evidence per an agreed-upon order. Admitted into evidence means admitted into evidence. There is no such thing as kind of admitted into evidence. The "admission of evidence" is a legal term of art meaning "[t]he allowance before a factfinder of testimony, *documents*, or other materials *for consideration in determining the facts at issue* in a trial or hearing." (Emphases added.) Black's Law Dictionary (2025). Because Dr. Fallas's CV was admitted evidence, any part of the CV was fair game "for consideration" in closing arguments. *Id.*

¶ 123 Thus, in his closing argument, plaintiff's attorney was entitled to rely on Dr. Fallas's CV, such as by reading from it. See *People v. Castejon*, 2025 IL App (1st) 221918, ¶ 41. He even had the right to put up any part of the CV on the screen: "[p]roperly admitted evidence may be displayed during closing argument" (internal quotation marks omitted) (*People v. Graves*, 2012 IL App (4th) 110536, ¶ 40). To the extent the CV contained hearsay, the opposing parties forfeited any hearsay objection when the CV was admitted into evidence without objection. See *People v. Akis*, 63 Ill. 2d 296, 299 (1976) ("Although we express no opinion as to whether the testimony in question did constitute hearsay, it is sufficient to note that when evidence of that character is admitted without objection it is to be considered and given its natural probative effect."). The same was true of any potential objection to an inadequate foundation: such an objection was waived by agreeing to the admission of the CV into evidence. See *Cairns v. Hansen*, 170 Ill. App. 3d 505, 511 (1988); *Hill v. Meister*, 133 Ill. App. 2d 678, 682 (1971). "All evidence, once admitted, is admitted substantively unless the trial court affirmatively limits it in some fashion." (Emphasis omitted.) 1 Robert J. Steigmann, Lori A. Nicholson, and Kevin J. Born, Illinois Evidence Manual § 1:4 (4th ed. 2024). When admitting plaintiff's exhibit No. 5 into evidence, the circuit court did not affirmatively limit that evidence

in any fashion.

¶ 124 We conclude, therefore, that the circuit court abused its discretion by refusing to allow plaintiff's attorney to "go through" Dr. Fallas's CV with the jury in his rebuttal closing argument. See *Simmons v. Garces*, 198 Ill. 2d 541, 571 (2002) ("The scope and character of closing argument are left to the discretion of the trial judge, who enjoys the best position to view the demeanor of counsel and the atmosphere of the trial. [Citation.] Accordingly, determinations regarding closing arguments will not be reversed absent an abuse of discretion." (Internal quotation marks omitted.)). Dr. Fallas's CV was admitted into evidence, without objection, as plaintiff's exhibit No. 5, and, consequently, any or all of the CV was a fit subject for argument and display. There was no reason to interfere with the rebuttal closing argument of plaintiff's attorney when he sought to uphold Dr. Fallas's qualifications by referring to plaintiff's exhibit No. 5.

¶ 125 To carry his burden, however, of showing "substantial prejudice" from the erroneous ruling regarding plaintiff's exhibit No. 5, plaintiff would have to explain how he would have used specific parts of that exhibit to rebut the argument that the attorney for the PSG defendants had made on the purportedly superior qualifications of Dr. Chand. *Fellows*, 2020 IL App (3d) 190388, ¶ 16.

¶ 126 If plaintiff's attorney had been allowed to put plaintiff's exhibit No. 5 on the screen, as he did at trial, the jury would have been reminded that Dr. Fallas graduated *magna cum laude* from the University of California at Los Angeles, with a bachelor of science in psychobiology; he graduated fifth in his class at Chicago Medical School in 1985; he had been teaching residents at Cedars-Sinai since 1990; he was the chief of surgery at Century City Hospital from 1997 to 1998 and 2002 to 2003; he was the clinical chief in the Department of

Surgery at Cedars-Sinai in 2013, 2016, and 2017; and he was a coauthor of 10 articles that had been published in medical journals.

¶ 127 By comparison, here is the argument that the attorney for the PSG defendants made on Dr. Chand's qualifications:

> "Dr. Chand has achieved the status of full professor at Cleveland Clinic and Loyola Medical School in Chicago.
>
> I mean, those are prestigious institutions, and you don't just walk in and say, [']I want to be a full professor.['] Dr. Chand earned that designation at both of those institutions.
>
> Dr. Chand, again, like Dr. Rossi but unlike Dr. Fallas, has been an associate program director for a residency program at two different places, Cleveland Clinic and—I misspelled. It should say Loyola University.
>
> Dr. Chand now is the director of surgical services overseeing 11 different hospitals. He has proctored fellowship candidates. Dr. Chand is routinely invited to share his knowledge around the world. He's published in the peer-reviewed literature. He's written books on the subject.
>
> So, ladies and gentlemen, as you weigh the experts, those are the comparisons that I think should cross your mind."

¶ 128 Plaintiff does not explain how he would have used plaintiff's exhibit No. 5 to rebut or counter that comparison of the qualifications of Dr. Chand and Dr. Fallas—particularly the point that the attorney for the PSG defendants made elsewhere in his closing argument: "[I]s there anything about Dr. Fallas that places him in a superior position to opine about what is reasonable for a general surgeon to do in Peoria, Illinois, in 2019?" Therefore, we conclude that

the error of disallowing the use of plaintiff's exhibit No. 5 in plaintiff's closing argument was harmless.

¶ 129 G. The Striking of Rebuttal Opinions

¶ 130 After plaintiff disclosed his rebuttal expert witnesses and their opinions (see Ill. S. Ct. R. 213(f)(3) (eff. Jan. 1, 2018)), the PSG defendants moved to strike the rebuttal expert opinions of Dr. Fallas and Dr. Triulzi on the ground that their rebuttal expert opinions, instead of being true rebuttals, were merely a bolstering of their originally disclosed expert opinions. The circuit court granted the motion. Plaintiff claims that the court thereby abused its discretion. See *McCaley v. Petrovic*, 2024 IL App (1st) 230918, ¶ 65.

¶ 131 To make a reasoned argument that the circuit court abused its discretion by striking the rebuttal expert opinions of Dr. Triulzi and Dr. Fallas, plaintiff would have to, first, state the disclosed opinions of defendant's expert witnesses, *i.e.*, Dr. John Roback, Dr. Jeffrey Fronza, and Dr. Chand, that plaintiff had intended to rebut. Next, plaintiff would have to state the disclosed rebuttal opinions of Dr. Triulzi and Dr. Fallas that explained, repelled, contradicted, or disproved the opinions of Dr. Roback, Dr. Fronza, and Dr. Chand. See *id.* ¶ 63. Finally, plaintiff would have to explain why the PSG defendants were incorrect in their contention that these purported rebuttal opinions were a repetition of the originally disclosed opinions of Dr. Triulzi and Dr. Fallas.

¶ 132 In his opening brief, plaintiff does not make a reasoned argument by following those steps. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Instead, he refers vaguely to "particular matters raised by Dr. Roback, Dr. Fronza, and Dr. Chand with respect to their opinions raised in their disclosures/depositions as to the timing of blood

products." It almost seems as if plaintiff expects us to construct an argument on his behalf from his citations to the record. Although he mentions "Dr. Fronza and Dr. Chand's opinion that 15-30 minutes to get blood is acceptable," he does not specify Dr. Triulzi's rebuttal opinion and explain how his rebuttal opinion differed from his originally disclosed opinion. If the plaintiff's originally disclosed opinion is *A* and the defendant's originally disclosed opinion is *not A*, we can see the logic of the view that repeating *A*, in supposed rebuttal, would serve little purpose. See *McCaley*, 2024 IL App (1st) 230918, ¶ 65 ("[T]he purpose of rebuttal is not to provide a second opportunity to present evidence that was or should have been presented in a plaintiff's case-in-chief."). Plaintiff refers to "Dr. Fallas'[s] opinions rebut[ing] [the] subject[ive] standard of care" proffered by Dr. Fronza, but plaintiff does not explain what that "subjective standard of care" was, what Dr. Fallas's rebuttal opinion was, and why the PSG defendants were mistaken in their objection that Dr. Fallas's rebuttal opinion was essentially a reiteration of his originally disclosed opinion on the standard of care. Without having been provided with a more specifically reasoned argument, we are unconvinced by plaintiff's claim that the circuit court abused its discretion by striking the rebuttal expert opinions of Dr. Fallas and Dr. Triulzi.

¶ 133 H. Motions *in Limine*

¶ 134 Plaintiff challenges the circuit court's rulings in which the court granted the OSF defendants' motion *in limine* No. 46, defendants' joint motion *in limine* No. 2, the OSF defendants' motion *in limine* No. 49, and defendants' joint motion *in limine* No. 32. Also, plaintiff challenges the denial of his motion *in limine* Nos. 57 and 61.

¶ 135 The OSF defendants maintain that plaintiff has forfeited those challenges. Citing, among other authorities, Illinois Rule of Evidence 103(b)(3) (eff. Oct. 15, 2015), the OSF defendants argue, "If the party is on the losing end of a granted motion *in limine*, the party must

make an offer of proof at trial; if the party has its own motion *in limine* denied, it must object when the offending evidence is introduced at trial."

¶ 136 In response to that claim of forfeiture, plaintiff cites *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002), in which the supreme court held that "an offer of proof is not required where it is apparent that the trial court clearly understood the nature and character of the evidence sought to be introduced." Also, plaintiff cites *Schmitz v. Binette*, 368 Ill. App. 3d 447, 454 (2006), in which the appellate court held, "[A]n offer of proof is not required if it is apparent that the trial judge understood the nature of the objection and the character of the evidence sought to be introduced or if the questions themselves and circumstances surrounding them show the purpose and materiality of the evidence." (Internal quotation marks omitted.) Plaintiff argues that, "[m]uch like in *Schmitz* and pursuant to *Dillon*, it is apparent that the trial court understood Plaintiff's contentions as to the significance of Dr. Patel's deposition testimony and further Plaintiff's position that Dr. Triulzi could rely on the same."

¶ 137 *Dillon* and *Schmitz*, however, predate Illinois Rule of Evidence 103(b)(3) (eff. Oct. 15, 2015), which provides as follows:

> "(3) *Civil Cases.* In civil trials, even if the court rules before or at trial on the record concerning the admission of evidence, a contemporaneous trial objection or offer of proof must be made to preserve a claim of error for appeal."

¶ 138 We should interpret supreme court rules the same way we interpret statutes, giving the language of the text its plain and ordinary meaning. *McGary v. Illinois Farmers Insurance*, 2016 IL App (1st) 143190, ¶ 47. "[S]pecific requirements in supreme court rules cannot be selectively ignored." *Id.* If the language of a supreme court rule is unambiguous, we should not read into the rule an exception, qualification, or condition that the supreme court

could have easily stated in the rule if it had seen fit to do so. See *Vali Mohammed v. Department of Financial & Professional Regulation*, 2013 IL App (1st) 122151, ¶ 10. We decline to add words to Rule 103(b)(3) by anachronistically engrafting upon it the exception in *Dillon*. See *Hill Behan Lumber Co. v. Irving Federal Savings & Loan Ass'n*, 121 Ill. App. 3d 511, 516 (1984) ("This court cannot add words to a statute to change its meaning."). It is for the supreme court, not for us, to decide if the clear terms of Rule 103(b)(3) should be so amended.

¶ 139 In our *de novo* interpretation of Rule 103(b)(3) (see *Stephen v. Huckaba*, 361 Ill. App. 3d 1047, 1051 (2005)), we find that the language of the rule is unambiguous: despite the ruling on a pretrial motion *in limine*, "a contemporaneous trial objection or offer of proof *must* be made to preserve a claim of error for appeal." (Emphasis added.) Ill. R. Evid. 103(b)(3) (Oct. 15, 2015). In his arguments on the motion *in limine* rulings, plaintiff does not appear to cite objections he made at trial that were overruled or offers of proof he made at trial after opposing parties' objections were sustained. Instead, plaintiff argues that, under case law predating Rule 103(b)(3), he was exempt from making contemporaneous trial objections or offers of proof. That argument, we conclude, is incompatible with the plain language of Rule 103(b)(3). We are obliged to follow that rule by holding that the motion *in limine* issues are unpreserved for appeal. See *id.*

¶ 140 I. Impeachment of Dr. Roback

¶ 141 Plaintiff argues that the circuit court abused its discretion by sustaining objections when plaintiff's counsel attempted to impeach Dr. Roback and to expose his bias and lack of credibility. The OSF defendants observe that "[n]othing in [plaintiff's] 92-page posttrial motion hints at the purported errors related to the impeachment, bias, and credibility of Dr. Roback that [plaintiff] now identifies on appeal." Plaintiff does not appear to disagree. Therefore, we find

these impeachment issues to have been forfeited. See Ill. S. Ct. R. 366(b)(2)(iii) (Feb. 1, 1994).

¶ 142 III. CONCLUSION

¶ 143 For the foregoing reasons, we affirm the circuit court's judgment in part and reverse it in part. We reverse the directed verdict against plaintiff and in favor of Dr. Pera and OSF as Dr. Pera's principal, and we remand this case for a trial on the three allegations of negligence that this directed verdict took from the jury. Otherwise, we affirm the judgment.

¶ 144 Affirmed in part and reversed in part; cause remanded with directions.