2023 IL App (4th) 220800-U

NO. 4-22-0800

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 29, 2023
Carla Bender
4th District Appellate
Court, IL

THOMAS E. EISELT,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Fulton County
BRETT J. CAHILL; SURE SHOT COMMUNICATIONS, LLC; CENTURY ENTERPRISES INC.; AMEREN ILLINOIS COMPANY; and MID CENTURY TELEPHONE CO-OPERATIVE,	)	No. 17L9
Defendants-Appellees.	)	Honorable Thomas B. Ewing, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cavanagh and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Plaintiff failed to establish that the jury's award of zero dollars in damages was internally inconsistent with its finding of liability against two defendants.

(2) Plaintiff's challenges to the jury's comparative negligence findings are moot.

(3) Plaintiff failed to establish that the trial court erred by granting defendant Ameren's motion for a summary determination as to some of plaintiff's negligence allegations against it. Plaintiff also forfeited or failed to establish error with respect to several pretrial rulings to bar testimony or exclude evidence related to Ameren's alleged negligence.

(4) Plaintiff failed to establish that the trial court erred by excluding testimony at trial from certain police and fire personnel.

(5) Plaintiff forfeited his claim that the trial court erred by excluding certain medical opinion testimony at trial.

(6) Plaintiff forfeited his challenge to the jury's verdict in favor of defendant Mid Century based on claims that it was inconsistent and against the manifest weight of

the evidence.

¶ 2 Plaintiff, Thomas E. Eiselt, brought a negligence action against defendants, Sure Shot Communications, LLC (Sure Shot) and its owner Brett J. Cahill, Ameren Illinois Company (Ameren), and Mid Century Telephone Co-operative (Mid Century) and its subsidiary, Century Enterprises Inc. (Century Enterprises), seeking damages for personal injuries he sustained as a result of a natural gas explosion. The matter proceeded to a jury trial, during which the trial court dismissed Century Enterprises as a defendant. The jury returned a verdict in favor of defendants Ameren and Mid Century and in favor of plaintiff against defendants Cahill and Sure Shot. The jury also found plaintiff was 50% at fault for his injuries and awarded him zero dollars in damages. Plaintiff appeals, arguing (1) the jury's verdict in his favor and against Cahill and Sure Shot was inconsistent with its award of zero damages, (2) the jury's comparative negligence finding was inappropriate, (3) the court erred by granting Ameren's motion for a summary determination as to some of plaintiff's negligence allegations and otherwise excluding evidence related to Ameren's negligence, (4) the court erred by barring certain witnesses from testifying at trial, (5) the court erred by granting a motion to exclude medical opinion testimony, and (6) the jury's verdict against Cahill and Sure Shot but not Mid Century was inconsistent and against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 16, 2016, Mid Century, a telephone and Internet service provider, retained the services of Sure Shot, a directional drilling construction company, to install underground fiber-optic cable in the downtown area of Canton, Illinois. While performing its work, Sure Shot struck a natural gas line owned and operated by Ameren, causing an underground natural gas leak. Ameren workers responded to the scene to stop the leak and repair the damaged

line. Ultimately, however, the leak resulted in an explosion at a building in downtown Canton known as the Opera House Annex (Annex). Plaintiff, a chiropractor whose office was located in an adjacent building referred to as the Opera House, was injured during the explosion as he was leaving his office.

¶ 5 In April 2017, plaintiff filed his initial complaint against defendants Cahill, Sure Shot, Century Enterprises, and Ameren. In May 2019, he filed an amended complaint adding Mid Century as a defendant. (As noted, Century Enterprises was later dismissed as a defendant in the case and plaintiff raises no claims against Century Enterprises on appeal. Accordingly, we discuss the facts and issues presented only as they relate to the remaining parties.) Plaintiff alleged Cahill and Sure Shot negligently performed their drilling work and that the explosion occurred as a direct and proximate result of their negligent acts or omissions. Plaintiff alleged Mid Century was negligent in hiring Sure Shot as a contractor and that it was vicariously liable for Sure Shot's negligence.

¶ 6 Plaintiff raised allegations that Ameren and its employees were negligent in responding to the scene and attempting to repair the damaged gas line. Specifically, he alleged Ameren's field crew negligently failed to comply with Ameren's own operating procedures, contact the proper authorities, warn the public about the damaged gas line, instruct the public to leave the area, check the inside of adjacent structures for gas migration or gas concentrations, and close valves that would have shut off the supply of gas to the damaged line. Paragraph 50 of plaintiff's amended complaint further contained the following specific negligence allegations:

> "h. Ameren management failed to supply the Ameren field personnel at the scene with a map of the area showing the location of the gas valve shut[ ]offs;
>
> i. Ameren management failed to supply to the Ameren field personnel

at the scene a workable computer/screen that showed the location of the gas valve shut[ ]offs;

j. Ameren management had the map for the gas shut[ ]off valve for Canton, Illinois, in Quincy, Illinois, so the field employees of Ameren could not locate the gas shut[ ]off valves for the leaking location;

k. Ameren management allowed its call takers to make statements *** which lessened the importance and impact of the safety instructions when read to customers; and,

l. Ameren management failed to have any system in place [to] make sure field crews responding to leaks follow AMEREN's Gas Operating Procedures."

¶ 7 In August 2019, Ameren filed a motion for a summary determination of major issues, seeking findings in its favor as to the negligence claims in paragraph 50(h) through (*l*) of plaintiff's amended complaint. In August 2021, the trial court entered a written order, granting the motion and striking the challenged paragraphs on the basis that plaintiff could not establish the element of proximate cause as to those specific claims.

¶ 8 The record shows the trial court also considered and ruled upon numerous other pretrial motions filed by the parties. Relevant to plaintiff's appeal, the court granted motions filed by defendants to (1) exclude evidence that Ameren's field crew violated a 20-foot "safety zone"; (2) exclude opinion testimony from plaintiff's natural gas expert, Robert Leonberger, regarding the adequacy of Ameren's training program and the warnings it provided; (3) prevent plaintiff from presenting evidence that Ameren's safety guidelines were evidence of the standard of care; (4) bar plaintiff from taking the deposition of Ameren's chief executive officer (CEO), Richard

Mark, or calling Mark as a witness at trial; (5) bar plaintiff from presenting the testimony of certain fire and police personnel; and (6) exclude certain opinions of plaintiff's medical expert, Dr. R. Douglas Collins.

¶ 9 At the April 2022 jury trial, defendants Cahill and Sure Shot were not represented by counsel and did not appear. Evidence was presented that showed Mid Century retained Sure Shot as an independent contractor to install underground cable in downtown Canton. To perform its work, Sure Shot used a Vermeer directional drill, which allowed it to install the cable by boring horizontally underground without disturbing the ground's surface. Evidence also showed that underground drilling necessitates avoiding contact with existing underground utility lines. Before drilling begins, existing lines are marked at the surface by the Joint Utility Locating Information for Excavators (JULIE). Because JULIE's markings identify the location of an existing utility line but not its depth, a drilling company must "pothole" at the location where its drilling will cross the marked utility line.

¶ 10 Potholing involves excavating to expose the existing utility line and determine its depth. Since the depth of a utility line can vary, it is important to pothole exactly where the drill path will cross the utility line. Potholing is important for safety reasons, is required by state law, and represents a reasonable standard of care in the drilling industry. Underground drilling without potholing is called "blind boring." Sure Shot employee Gregory Atkins testified a blind bore involves "not knowing where the utility is and just hoping for the best." Evidence was presented at trial that both Cahill and Sure Shot's employees at the scene understood what potholing entailed and its importance.

¶ 11 On the afternoon of November 16, 2016, Sure Shot was drilling underground to a "vault" or "junction box" for telecommunications cables that was located in a sidewalk near the

Annex. The top of the vault was positioned flush with the sidewalk, and the vault had four sides but no bottom so that water could "drain out of it." Existing utility lines in the area had been marked. To reach the vault, Sure Shot had to cross existing underground gas lines at two locations. Sure Shot potholed at the point of crossing for the first gas line, which was in an area covered by dirt. The point of crossing for the second gas line, which was near the vault, was covered by concrete from the sidewalk. Rather than remove a portion of the sidewalk to pothole precisely where the drill path crossed the gas line, Sure Shot left the concrete intact and potholed next to the sidewalk, approximately 18 inches away from the point of crossing. Sure Shot successfully drilled into the vault; however, it struck the gas line as it was pulling its drill back, rupturing the line and causing gas to start blowing out of the open vault. Sure Shot called JULIE to report the incident but not 911.

¶ 12 At 4:06 p.m. on November 16, Ameren received a call about the ruptured gas line. Its employee, journeyman Jordan Stanley, arrived at the scene at 4:13 p.m. Stanley made contact with Sure Shot employees, observed that gas was coming out of the open vault, and used a combustible gas indicator (CGI) to do a perimeter check to see if the gas was spreading. Evidence showed CGIs were used by Ameren journeymen to measure the percentage of natural gas in an area and that their purpose was to find combustible concentrations of gas. Stanley also turned off the gas meters at the nearby building to extinguish interior pilot lights and contacted his supervisor to request additional help. By 4:30 p.m., three additional Ameren workers arrived at the scene—journeyman Tom Jackson and apprentices Randy Pherigo and Arturo Silva. The workers continued to perform perimeter checks with the CGIs, including around the doors and windows of the nearby Annex. They also used a probe to check for gas along the Annex's foundation. Jackson testified that the workers "were picking up most of the concentration [of gas] right there" at the vault and

that their CGI readings were "always zero outside of that vault." Ultimately, the workers determined from their CGI readings that gas from the broken line was only coming out of the open vault and going into the atmosphere.

¶ 13 Although Ameren's field crew at the scene did not call 911, Ameren presented evidence that Illinois law only requires a contractor, like Sure Shot, who damages a gas line to make such a call. Ameren journeymen have the option of contacting 911 and requesting the assistance of police and fire personnel when investigating a leak, but such is not required in every gas leak situation. For example, Ameren workers may contact 911 if they need assistance with a road closure or evacuating a building because of hazardous levels of gas inside. However, there would be no need for fire or police personnel to respond to a situation where gas from a damaged line is quickly dispersing into the atmosphere and there is no evidence of underground migration. Gas being released into the atmosphere mixes with air and quickly falls below flammable levels. Additionally, had Sure Shot called 911 in this instance, the 911 dispatcher would have contacted Ameren to repair the line.

¶ 14 To address the gas leak, Ameren's field crew used a backhoe to remove a portion of the sidewalk. Next, they dug to the location of the damaged line and, using a "vise grip" type of tool, "pinched off" the gas line to stop the leak. The crew then expanded the hole they dug to have room to make repairs to the damaged line. Jackson testified he and the other workers were in the process of fixing the damaged line when the explosion occurred. Ultimately, the evidence presented at trial indicated the explosion occurred in the basement of the Annex after gas from the ruptured line migrated underground to an abandoned coal chute that led into the basement. The record reflects the explosion occurred at approximately 5:43 p.m.

¶ 15 After Sure Shot damaged the gas line, the odor of gas could be detected from two

to three blocks away. Plaintiff testified he began to smell the odor of gas in his nearby office. The smell became stronger and his office manager, Jill Covington, started to get a headache. Plaintiff's last patient of the day, Margaret Tomich, arrived at his office around 4:50 p.m. and also noticed the smell of gas.

¶ 16 Plaintiff directed Covington to call Ameren to find out if there was a gas leak in the area. He denied that he ever spoke to Ameren or that he listened to the call that Covington made. Covington testified that she called Ameren and spoke with someone who "sounded like she was reading from a script." A recording of Covington's call with Ameren was played for the jury. The record reflects Covington informed the Ameren call taker of the odor of gas inside plaintiff's office and their location. During the call, the Ameren call taker stated as follows:

> "Now, I do have some safety instructions that I am required to read you. Do not operate any electrical devices such as lighting, thermostats, or garage door openers. Do not operate or unplug any electrical appliances, phone chargers, or other sources of electrical power. Do not light cigarettes, matches, candles, et cetera. Do not open windows or doors to ventilate. If calling from your land line phone, set the phone down. Do not hang up and leave the building. Do not re-enter the property for any reason until Ameren personnel tell you that it is safe to enter. If you are using a cell phone, carry it outside with you. And then hang up. Do not wait right outside of the building, but please watch for us from a safe distance either up or down the street. It is important that someone makes contact with the service person upon arrival, or for safety reasons we may have to turn the gas off. I am issuing an order immediately. Please watch for and make contact with the service person who usually arrives within 60 minutes."

¶ 17 While Covington spoke on the phone with Ameren, Tomich went outside and spoke to Jackson, with whom she was familiar. She testified she told Jackson that there was a strong odor of gas inside plaintiff's building. Jackson replied that "a company had drilled into Ameren's gas line" and that Tomich "was smelling the gas from the outside." Jackson did not tell Tomich to evacuate, nor did he go to plaintiff's office to take a gas reading. Tomich returned to plaintiff's office and relayed her conversation with Jackson, including that she was not told to evacuate.

¶ 18 Plaintiff testified that when Tomich returned to his office, he asked if Jackson stated they should evacuate. Tomich replied, "[N]o, there's going to be a strong scent of gas in the air, but there was nothing we have to worry about." Plaintiff stated he did a "quick ten-minute treatment on" Tomich and then told her and Covington that everyone had to leave the office because the odor of gas was getting stronger. He testified he "just knew [they] had to get out of there" and that he got Tomich and Covington out of the office as fast as he could. Tomich and Covington both left plaintiff's office at approximately 5:13 p.m. Plaintiff testified he stayed behind "getting [his] stuff together" and getting a box that he wanted to take out of his office. As he was leaving his office, he left the lights on because he "knew that you shouldn't turn off any electrical equipment if you smell gas."

¶ 19 Plaintiff stated he was approximately five feet from the back door of the Opera House when the explosion occurred at 5:43 p.m. He saw a flash, the ceiling started to fall on him, and he was "slam[med]" to the floor on his left side. Plaintiff asserted he crawled to the parking lot to try to get help. He remembered lying on his back on the sidewalk and a woman coming to talk to him. Evidence showed plaintiff was initially assisted at the scene by a registered nurse, who happened to be in the area at the time of the explosion. Eventually, paramedics arrived and took plaintiff to the hospital, where he remained overnight.

¶ 20 Plaintiff testified that prior to the explosion, he was in good physical health and had no mental health problems. As a result of the explosion, he suffered cuts and bruises, a broken rib on his left side, and left ankle fractures. With respect to his left ankle injury, plaintiff left the hospital with "a walking boot" and crutches. He followed up with an orthopedic surgeon in December 2016 and February 2017. Plaintiff testified that by February 2017, his ankle was healing, the bones in his foot were normally aligned, and he was not experiencing any pain. Ultimately, plaintiff was off work for six months while he recovered from the injuries caused by the explosion. When he returned to work, he resumed his same work schedule.

¶ 21 Plaintiff also presented evidence that in February 2020, he saw Dr. Gregory O'Shanick at the recommendation of his attorney. Dr. O'Shanick testified he was a physician specializing in brain injury medicine and also board-certified in general psychiatry. Dr. O'Shanick opined that plaintiff's exposure to the blast changed elements of his "brain function" and that plaintiff had also suffered a concussion. He stated that as a result of the explosion itself, or the "neurotrauma" it caused, plaintiff had the following conditions: (1) cognitive communication disorder, (2) post-traumatic stress disorder (PTSD), (3) a sleep disorder, (4) attention-deficit disorder, (5) dysexecutive syndrome, (6) anosmia or loss of sense of smell, (7) visuo-vestibular disorder (8) hyperacusis or sensitivity to loud noises, (9) personality change, (10) frontal lobe dysfunction, and (11) post-traumatic headaches. Dr. O'Shanick also opined that plaintiff's conditions were permanent.

¶ 22 Both Ameren and Mid Century presented medical evidence that conflicted with Dr. O'Shanick's opinions. Defendants' evidence showed that in the immediate aftermath of the explosion and in the following years, but before plaintiff saw Dr. O'Shanick, plaintiff's medical providers found no evidence that he suffered from a brain injury or that he had any neurological

or psychiatric abnormalities. Defendants also presented their own expert medical witnesses, who disagreed with Dr. O'Shanick's opinions. Dr. Gregory Cizek, a neuroradiologist, reviewed a magnetic resonance imaging scan of plaintiff's brain performed in December 2020 and found no objective evidence that plaintiff suffered any nerve damage or traumatic brain injury. Dr. Robert Fucetola, a neuropsychologist, evaluated plaintiff and reviewed his medical records. He found no evidence that plaintiff suffered a traumatic brain injury as a result of the explosion and opined plaintiff was not suffering from PTSD. Additionally, Dr. Richard Lazar, a neurologist, also examined plaintiff and reviewed his medical records. He did not believe plaintiff sustained either a brain injury or concussion as a result of the November 2016 explosion. He further opined plaintiff was not suffering from PTSD.

¶ 23 During his initial closing argument, plaintiff's counsel expressed that for his injuries, plaintiff did not "want double compensation for anything" and stated that he had already been compensated for the six months he was off of work, his lost office equipment, and his medical bills. He referenced plaintiff's alleged "permanent injuries" and suggested that the jury award plaintiff $40 to $50 million in damages, stating as follows:

> "So let me give you a thought, not bound by it at all. But I don't think the byproduct of whatever happens here, and whatever this court reporter puts down will give posterity a view into what went wrong and how to prevent it from happening again, so I say to this jury, is 50-million dollars too much? Is 40-million dollars too little?"

During his rebuttal argument, plaintiff's counsel again stated plaintiff did not want the "jury to duplicate any damages." Also, in telling the jury that it had "to figure out how to compensate [plaintiff]," he argued as follows:

> "Here's a man that has a diminished capacity to enjoy life. His life has changed. He

has loss of normal life. [Plaintiff's] not at fault here.

All the talk that has been made in this case is really haze. Look at the facts, do what you think is right. These are significant injuries. They are hard to see because it's brain damage. We had some pretty good experts talk about it."

¶ 24 As stated, the jury returned a verdict in favor of Ameren and Mid Century, but it found in plaintiff's favor as to defendants Cahill and Sure Shot. It also found plaintiff suffered zero dollars in damages as a proximate result of the explosion and that plaintiff was 50% at fault for his injuries.

¶ 25 In May 2022, plaintiff filed a posttrial motion, seeking a new trial against Ameren and Mid Century and either a new trial against Cahill and Sure Shot or, alternatively, a judgment on the verdict of liability against them "with a date for a prove up of damages against" those two defendants. In his motion, plaintiff argued the trial court erred by (1) summarily striking some of his negligence allegations against Ameren; (2) barring him from taking the deposition of or presenting trial testimony from Ameren's CEO; (3) barring him from presenting the testimony of Assistant Fire Chief Tony Plummer, Police Chief Rick Nichols, and Detective Candi Buhl (also referred to in the record and by the parties as Candi Arnold); (4) limiting the opinions of his natural gas expert; and (5) granting certain motions *in limine* filed by defendants. Plaintiff also argued the jury's verdict was irreconcilably inconsistent where it found Cahill and Sure Shot liable but awarded him zero dollars in damages and that its comparative fault finding was "legally incorrect, against the manifest weight of the evidence, and contrary to reason and rationality." In August 2022, the court conducted a hearing at which plaintiff elected to stand on his motion and made no further argument. The court denied plaintiff's motion.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 A. Zero Damages

¶ 29 On appeal, plaintiff first argues that the jury's finding of liability against Cahill and Sure Shot was internally inconsistent with its award of zero damages. He contends that to find Cahill and Sure Shot liable, the jury necessarily had to conclude that he was injured and that his injuries were proximately caused by defendants' negligence. Plaintiff maintains defendants conceded his "basic injuries" and that the "uncontroverted evidence" also showed he suffered injuries as a result of the explosion. He asserts the jury did not have the discretion to disregard the evidence of injury, and he seeks a new trial on the issue of damages.

¶ 30 A verdict that is legally inconsistent "must be set aside and a new trial granted." *Redmond v. Socha*, 216 Ill. 2d 622, 642, 837 N.E.2d 883, 895 (2005). Whether a jury has rendered an inconsistent verdict is a question of law that is subject to *de novo* review. *Id.* On review, this court "will exercise all reasonable presumptions in favor of the verdict ***, which will not be found legally inconsistent unless absolutely irreconcilable." *Id.* at 643. A verdict "will not be considered irreconcilably inconsistent if supported by any reasonable hypothesis." *Id.* at 644.

¶ 31 Here, the jury was instructed that, with respect to each defendant, plaintiff had to prove that defendant was negligent, plaintiff was injured, and defendant's negligence was a proximate cause of plaintiff's injury. The jury was also instructed as follows:

> "If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendant, taking into consideration the nature, extent, and duration of the injury, the pain and suffering experienced as a result of the injuries,

the emotional distress experienced, loss of normal life experienced. Whether any of these elements of damages has been proved by the evidence is for you to determine."

¶ 32 At trial, plaintiff presented evidence that as a result of the explosion, he sustained physical injuries, including cuts and bruises, a broken rib, and ankle fractures. He also presented evidence that the explosion caused him traumatic brain injuries and resulted in him suffering from the various conditions of ill-being identified by Dr. O'Shanick, including PTSD. As plaintiff appears to acknowledge on appeal, conflicting evidence was presented as to this latter category of injuries. Specifically, defendants presented their own experts and evidence that the explosion did not cause plaintiff to suffer a traumatic brain injury or any mental-health-related condition. The jury could reasonably have accepted defendants' evidence as to the nonexistence of such alleged injuries.

¶ 33 Further, although there is no dispute that plaintiff was physically injured in the explosion—suffering cuts and bruises, a broken rib, and a fractured ankle—the record reflects plaintiff's arguments to the jury suggested he was not seeking damages related to those injuries. During his opening statement, plaintiff's counsel asserted plaintiff did not want "duplicate damages," stating he had already been compensated for office equipment that was destroyed in the blast and for the six months he was "disabled" and could not work. Plaintiff's counsel further told the jury that plaintiff had suffered head and brain injuries during the explosion, which was "where the serious injury is." During closing argument, plaintiff's counsel also argued as follows: "[Plaintiff] doesn't want double compensation for anything. He wants to be sure that the jury knows that he was compensated for his time off, six months, he was compensated for all the equipment he lost, and his medical bills were paid." Counsel emphasized plaintiff's alleged

brain-related injuries, argued that such injuries were "permanent," and suggested to the jury that an award of $40 or $50 million in damages was appropriate. Counsel made similar arguments during his rebuttal argument. Importantly, although counsel referenced plaintiff's rib and ankle fractures during his argument, he did not specifically request the jury award damages for those injuries.

¶ 34 On appeal, plaintiff argues that while he did not seek economic damages in connection with his undisputed physical injuries, he was still entitled to noneconomic damages for those injuries, *i.e.*, pain and suffering, emotional distress, and loss of a normal life experience. However, plaintiff fails to point to any specific argument he made to the jury to support such awards. Given that plaintiff (1) explicitly asked the jury not to award economic damages in connection with his undisputed physical injuries, (2) made no specific request for noneconomic damages for those injuries, and (3) emphasized only his claimed brain injuries, it is reasonable to conclude that the jury ultimately believed plaintiff was only seeking damages for those alleged brain injuries. As stated, whether plaintiff suffered brain-related injuries as a result of the explosion was hotly contested, and the jury could have reasonably accepted defendants' evidence as to that issue. See *id.* (stating a verdict "will not be considered irreconcilably inconsistent if supported by any reasonable hypothesis"). We point out that plaintiff's closing argument provided the jury with little guidance in terms of making an award of damages beyond counsel's broad statement in his initial argument about an award of $40 million as perhaps being too little and $50 million too much. Considering the above, we are unable to conclude that the jury's finding of liability against Cahill and Sure Shot and its award of zero damages to plaintiff were inconsistent.

¶ 35 Additionally, we note that in his appellant's brief, not only does plaintiff fail to identify any argument to the jury regarding noneconomic damages for his undisputed physical

injuries, he also failed to identify, through a reasoned analysis or citations to the appellate record, any evidence presented at trial to support his damages claim. We note Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) requires that the "Argument" section of an appellant's brief "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on" and that "reference shall be made to the pages of the record on appeal where evidence may be found." Further, "[p]oints not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." *Id.* "The failure to provide proper citations to the record is a violation of Rule 341(h)(7), the consequence of which is the forfeiture of the argument." (Internal quotation marks omitted.) *Enbridge Pipeline (Illinois), LLC v. Hoke*, 2019 IL App (4th) 150544-B, ¶ 43, 123 N.E.3d 1271. The trial record in this case is voluminous, and we would be warranted in finding plaintiff's damages claim forfeited based upon his failure to properly support his claim with pertinent citations to the appellate record.

¶ 36 B. Comparative Negligence

¶ 37 On appeal, plaintiff next argues that the jury's comparative fault finding was "not appropriate." He contends defendants Cahill and Sure Shot were not legally entitled to a comparative fault analysis and that the jury's assessment of comparative fault was against the manifest weight of the evidence.

¶ 38 In 1986, the legislature established a rule of modified comparative fault, by passing section 2-1116 of the Code of Civil Procedure (Code) (Ill. Rev. Stat. 1987, ch. 110 ¶ 2-1116). *Gillespie Community Unit School Dist. No. 7, Macoupin County v. Union Pacific Railroad Co.*, 2015 IL App (4th) 140877, ¶ 197, 43 N.E.3d 1155. That section provided:

> "In all actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, the plaintiff

> shall be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought. The plaintiff shall not be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is not more than 50% of the proximate cause of the injury or damage for which recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of fault attributable to the plaintiff." Ill. Rev. Stat. 1987, ch. 110 ¶ 2-1116.

(Public Act 89-7 (Pub. Act 89.7), §15 (effective Mar. 9, 1995) rewrote section 2-1116; however, in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 689 N.E.2d 1057 (1997), the supreme court held Public Act 89-7 was unconstitutional in its entirety, resulting in the 1986 version of section 2-1116 being the version in effect.)

¶ 39 A claim of comparative negligence is an affirmative defense, which a defendant must plead. *Blackburn v. Johnson*, 187 Ill. App. 3d 557, 565, 543 N.E.2d 583, 588 (1989).

¶ 40 Here, although neither Cahill nor Sure Shot raised comparative negligence as an affirmative defense, both Ameren and Mid Century did make that claim when answering plaintiff's amended complaint. As a result, the issue of plaintiff's negligence was properly before the jury. As Ameren points out on appeal, plaintiff also offered a comparative negligence jury instruction, which was accepted without objection. Moreover, the instruction contained no qualification as to its applicability.

¶ 41 Nevertheless, on appeal, plaintiff contends that because Cahill and Sure Shot did not plead comparative negligence, they cannot receive the benefit of such a finding by the jury. The record shows plaintiff raised the issue in his posttrial motion and he maintains that, under such

circumstances, the trial court had an "obligation" to nullify the jury's comparative negligence finding. Ultimately, however, we find the issue is moot. "[C]omparative negligence allows parties to recover damages that are not attributable to their own fault." *Dayton v. Pledge*, 2019 IL App (3d) 170698, ¶ 57, 128 N.E.3d 1120. "A comparative negligence instruction permits the trier of fact to reduce a plaintiff's damages by the percentage of fault attributable to the plaintiff." *Id.* As discussed, although the jury found Cahill and Sure Shot liable in this case, it awarded plaintiff zero dollars in damages. For the reasons expressed above, plaintiff has failed to establish error with respect to that determination of the jury. Accordingly, in this case, there was no damages award to reduce by the percentage of plaintiff's fault and, thus, no effective relief that could be granted to plaintiff from nullifying the comparative fault portion of the jury's verdict. See *Wirtz v. Quinn*, 2011 IL 111903, ¶ 102, 953 N.E.2d 899 (stating a plaintiff's claims are moot where a court cannot grant any effective relief).

¶ 42 On appeal, plaintiff also argues that the jury's finding of comparative negligence was against the manifest weight of the evidence. However, for the same reasons already stated, such a claim as it relates to Cahill and Sure Shot is moot because no damages were awarded and there is no damages award to reduce based upon plaintiff's percentage of fault. Plaintiff's claim is also moot as to Ameren and Mid Century. "[W]here a defendant is found not liable, alleged errors which pertain solely to the question of damages do not afford grounds for reversal." *Mackey v. Daddio*, 139 Ill. App. 3d 604, 610, 487 N.E.2d 1167, 1171 (1985); see *Runyon v. Rich*, 120 Ill. App. 3d 631, 637, 458 N.E.2d 213, 216 (1983) (finding it was unnecessary to resolve the plaintiff's challenge to evidence that related only to the mitigation of damages when "there were no damages to mitigate" and the question of the propriety of the evidence was rendered moot by the verdict in favor of the defendants). In this instance, neither Ameren nor Mid Century was found liable, and

the jury did not reach the issue of damages as to those defendants. Given these circumstances, we decline to address plaintiff's claim that the jury's comparative fault finding was not supported by the evidence.

¶ 43 C. Exclusion of Claims and Evidence Related to Ameren's Alleged Negligence

¶ 44 Plaintiff further asserts the trial court improperly denied him the opportunity to present his full case against Ameren with respect to "its actions that led to the catastrophic explosion." He complains the court committed reversible error by granting Ameren's motion for a summary determination in its favor with respect to five of his negligence allegations against it. Plaintiff also argues that the court erred by granting various pretrial motions to exclude evidence pertaining to his negligence claims against Ameren.

¶ 45 1. *Summary Determination in Ameren's Favor*

¶ 46 As set forth above, Ameren moved for a summary determination in its favor as to five paragraphs of plaintiff's amended complaint, which raised allegations that it negligently (1) failed to supply its responding field crew with either computerized or printed maps that showed the location of pertinent gas shutoff valves, (2) allowed its call takers to make statements that lessened the importance and impact of the safety instructions they provided to customers, and (3) "failed to have any system in place [to] make sure its field crews responding to leaks follow[ed] [Ameren's] Gas Operating Procedures." The trial court granted the motion, finding none of the alleged negligent acts or omissions "were a material element or a substantial factor" in plaintiff's claimed injuries or damages, nor did they "directly or proximately cause" plaintiff's claimed injuries or damages. On appeal, plaintiff challenges the court's ruling as to each of the above allegations.

¶ 47 The Code provides that "[a] defendant may, at any time, move *** for a summary judgment in his or her favor as to all or any part of the relief sought against him or her." 735 ILCS 5/2-1005(b) (West 2020). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2020). The Code further provides for summary determinations as to major issues in a case, stating:

> "[I]f a party moves for a summary determination of one or more, but less than all, of the major issues in the case, and the court finds that there is no genuine issue of material fact as to that issue or those issues, the court shall thereupon draw an order specifying the major issue or issues that appear without substantial controversy, and directing such further proceedings upon the remaining undetermined issues as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be conducted accordingly." 735 ILCS 5/2-1005(d) (West 2020).

A trial court's summary determination ruling is subject to *de novo* review. *Kay v. Frerichs*, 2021 IL App (1st) 192271, ¶ 18, 205 N.E.3d 82.

¶ 48 Further, "[t]o recover damages based upon negligence, a plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the breach was the proximate cause of the plaintiff's injury." *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225, 938 N.E.2d 440, 446 (2010). "Proximate cause is an essential element of a negligence claim that, if not proved, will prevent the plaintiff from establishing a *prima facie* case." *Vertin v. Mau*, 2014 IL App (3d) 130246, ¶ 10, 8 N.E.3d 658.

¶ 49 "The term 'proximate cause' contains two elements: cause in fact and legal cause." *Krywin*, 238 Ill. 2d at 225-26. "Cause in fact exists where there is a reasonable certainty that a defendant's acts caused the plaintiff's injury." *Id.* at 226. "The relevant question is whether the defendant's conduct is a material element and a substantial factor in bringing about the injury," and "[c]onduct is a material element and a substantial factor if, absent the conduct, the injury would not have occurred." *Id.* By contrast, legal cause "is established only if the defendant's conduct is so closely tied to the plaintiff's injury that he should be held legally responsible for it." (Internal quotation marks omitted.) *Young v. Bryco Arms*, 213 Ill. 2d 433, 446, 821 N.E.2d 1078, 1086 (2004). "The proper inquiry regarding legal cause involves an assessment of foreseeability, in which we ask whether the injury is of a type that a reasonable person would see as a likely result of his conduct." *Id.* at 446-47. "Although proximate cause is generally a question of fact [citation], the lack of proximate cause may be determined by the court as a matter of law where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause [citation]." *Id.* at 447.

¶ 50 a. Forfeiture

¶ 51 Initially, Ameren argues plaintiff forfeited his challenge to the trial court's summary determination ruling by failing to properly raise the issue in his posttrial motion. It contends plaintiff's posttrial motion claims were conclusory, in that he provided no specific legal or factual basis for his assertions of error.

¶ 52 Section 2-1202 of the Code (735 ILCS 5/2-1202 (West 2022)) sets forth strict rules for the filing of posttrial motions in a jury case. *Crim v. Dietrich*, 2020 IL 124318, ¶ 25, 164 N.E.3d 1205. It provides any "[r]elief desired after trial in jury cases *** must be sought in a single post[ ]trial motion." 735 ILCS 5/2-1202(b) (West 2022). Further, "[t]he post[ ]trial motion must contain the points relied upon, particularly specifying the grounds in support thereof, and must

state the relief desired, as for example, the entry of a judgment, the granting of a new trial or other appropriate relief." *Id.* Neglecting to file a posttrial motion after a jury trial "fail[s] to preserve any challenge to the jury's verdict for appellate review." *Crim*, 2020 IL 124318, ¶ 35. Additionally, "[a] party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion." Ill. S. Ct. R. 366(b)(2)(iii) (eff. Feb. 1, 1994).

¶ 53 However, there are exceptions to the posttrial motion requirement. *Crim*, 2020 IL 124318, ¶ 26. For example, a party will not forfeit an issue for purposes of appellate review in cases (1) where the jury fails to reach a verdict or (2) when the trial court directs a verdict on all issues. *Id.* With respect to the second exception, our supreme court has set forth the following rationale:

> " ' "When a judge directs a verdict at any stage of the trial, in effect, he has removed the case from the realm of the rules relating to jury cases and the rules applicable to bench trials should apply. It seems illogical to require a party to address the same arguments to the same judge on the identical questions before proceeding to review by an appellate tribunal." ' " *Id.* ¶ 27 (quoting *Keen v. Davis*, 38 Ill. 2d 280, 281-82, 230 N.E.2d 859, 860-61 (1967), quoting *Larson v. Harris*, 77 Ill. App. 2d 430, 434, 222 N.E.2d 566, 568 (1966)).

¶ 54 The supreme court has also applied the same reasoning when summary judgment is entered "as to one or more issues in a case" and the case then proceeds with a jury trial "upon the remaining undetermined issues." *Mohn v. Posegate*, 184 Ill. 2d 540, 546, 705 N.E.2d 78, 81 (1998).

> "In the same way that the jury does not determine the verdict when it is directed, the jury makes no factual determination concerning the issue or issues disposed of

by entry of summary judgment before trial of the case upon the remaining undetermined issues. Thus, we conclude that, as in a nonjury case in which a post-judgment motion need not be filed, a party need not raise in a post[ ]trial motion any issue concerning the pretrial entry of summary judgment as to part of a cause of action in order to preserve the issue for review." *Id.* at 546-47.

¶ 55 As set forth in *Mohn*, plaintiff was not required to challenge the trial court's granting of Ameren's motion for a summary determination in a posttrial motion to preserve that issue for appellate review. Thus, the issue has not been forfeited, and we will consider its merits.

¶ 56 b. Shutoff Valves and Maps

¶ 57 As to the shutoff valves and maps, plaintiff's amended complaint alleged as follows:

"h. Ameren management failed to supply the Ameren field personnel at the scene with a map of the area showing the location of the gas valve shut[ ]offs;

i. Ameren management failed to supply to the Ameren field personnel at the scene a workable computer/screen that showed the location of the gas valve shut[ ]offs;

j. Ameren management had the map for the gas shut[ ]off valve for Canton, Illinois, in Quincy, Illinois, so the field employees of Ameren could not locate the gas shut[ ]off valves for the leaking location."

In seeking a summary determination as to these allegations, Ameren argued plaintiff could not establish that the lack of maps showing the location of shutoff valves for the damaged gas line was a proximate cause of his injuries. Specifically, it asserted the "lack of timely mapping a construction valve" was irrelevant to the case as no evidence showed "that any of the four Ameren

gas personnel who responded to the damaged service line sought to use a construction valve to isolate the leaking service line and were unable to locate a valve." According to Ameren, "not having the valves on the computer map, and not having a printed map, had no effect on the response to the gas leak." The trial court granted Ameren's motion, finding plaintiff's claims were not a proximate cause of his injuries. We find no error in that determination.

¶ 58 It is undisputed that discovery in the case showed portions of Canton's gas distribution system were updated in 2012 and that computerized maps of that system were not updated with the location of newly installed shutoff valves prior to the 2016 explosion. Ultimately, however, evidence submitted to the trial court in connection with Ameren's motion for summary determination supports Ameren's arguments that the unavailability of maps showing the location of the shutoff valves was not a proximate cause of either the explosion or of plaintiff's injuries.

¶ 59 First, evidence presented by the parties in connection with Ameren's motion failed to show that any member of Ameren's field crew attempted to access the shutoff valves but was unable to do so because they were not properly mapped. The record reflects four workers responded to the report of the damaged gas line—journeymen Jordan Stanley and Thomas Jackson and apprentices Randy Pherigo and Arturo Silva. In his filings with the trial court, plaintiff acknowledged that Pherigo "was not involved in any discussion regarding the use of valves." Additionally, evidence showed that Silva was killed in the explosion. Although Stanley was injured in the explosion and had no memory of what occurred, the trial court was presented with statements he provided about the incident to the National Transportation Safety Board (NTSB), as well as his discovery deposition.

¶ 60 Before the NTSB, Stanley was asked what options he had as an Ameren employee to isolate a leak, and he responded as follows: "The valves. If it's steel, I have the option, being a

welder, to weld on stopper fittings. And if it's plastic and there are no valves available, we have the option of squeezing off." Plaintiff maintains on appeal that Stanley's statements lead to a reasonable inference that he would first "have looked at maps to determine whether the leak could be isolated with the use of valves." However, during his discovery deposition, Stanley elaborated on his NTSB statements, testifying that valves were not necessarily the "first option" to isolate a leak and that what was the first option "[d]epends on the situation." Additionally, the record shows that Jackson testified during his discovery deposition that the decision was made to "pinch off" the damaged gas line to stop the leak rather than seek shutoff valves because the gas was "venting through the air pretty good." Because the gas was "venting," Jackson believed he "didn't need to shut off the valves that would shut off that section of the pipeline." He further stated that to his knowledge, "[N]obody looked at any maps to try to locate where those valves were."

¶ 61 Second, contrary to plaintiff's assertions on appeal, the evidence presented to the trial court fails to reflect that any Ameren policy required its workers to first use shutoff valves when responding to a leak. Evidence showed that regarding the topic of "Major Leaks or Line Breaks," Ameren's "Gas Operating [and] Maintenance Plan" provided as follows:

> "After the emergency situation has been evaluated, isolate the leak utilizing the methods below appropriate to the extent of the emergency. For example, if gas migration is creating an immediate hazard it may be prudent to utilize emergency valves to reduce the immediate hazard rather than excavating and squeezing pipe.
> ***
>
> (1) Use emergency valves, when appropriate or
>
> (2) Squeeze plastic or steel pipe *** or
>
> (3) Use control fittings or

(4) Construct a by-pass around damaged area and isolate damaged section."

Additionally, Steve Nuttall, the foreman of the gas department in Canton, testified at his discovery deposition that in response to a leak, Ameren workers had the option of using "[v]alves or pinching it off." When asked if he would look for valves first if he was "on site," he stated, "It would just depend on where I was at and what the situation was."

¶ 62 The evidence presented to the trial court in connection with Ameren's motion for a summary determination supports its claim that the unavailability of maps with the updated locations of shutoff valves was neither a cause in fact nor a legal cause of plaintiff's injuries. Accordingly, the record reflects no error by the court in granting Ameren's motion and striking those allegations from plaintiff's amended complaint.

¶ 63 c. Ameren Call Taker's Statements

¶ 64 Plaintiff's amended complaint also contained an allegation that Ameren was negligent because it "allowed its call takers to make statements *** which lessened the importance and impact of the safety instructions when read to customers." His theory with respect to this allegation was that when Covington, his office manager, called Ameren to report the smell of gas, she spoke with an Ameren call taker who provided warnings prefaced with the phrase, "Now, I do have some safety instructions that I am required to read to you." After the call, Covington reported to plaintiff that the "call taker 'read a script.' " According to plaintiff, that statement—when combined with what Tomich, plaintiff's patient, reported about her conversation with Jackson—"caused [plaintiff] to remain in his office, rather than heed the script warnings." He contends that as a result, a reasonable inference existed that "the script" was a cause of his injuries.

¶ 65 Ameren moved for a summary determination as to this allegation, arguing there was no evidence in the case "that any statements by Ameren call takers had any relationship to

Plaintiff's claimed injuries and damages." It argued plaintiff never spoke to the Ameren call taker and was not aware of the call taker's prefatory statement to Covington. The trial court granted the motion, finding plaintiff could not establish proximate cause.

¶ 66 The record shows that evidence before the trial court included plaintiff's discovery deposition, during which he testified about his actions after Covington completed her call with Ameren. In particular, plaintiff testified that after Covington reported to him that the Ameren call taker read her "a script"—and he learned of the conversation between Tomich and Jackson—plaintiff told Covington and Tomich, "[W]e have got to get out of here. This [odor] is getting too strong." Plaintiff then testified he got Covington and Tomich out of the office "as fast as [he] could." Plaintiff's testimony suggests he did not believe it was safe to remain in his office given the strong odor of gas even after Covington's phone call to Ameren. On appeal, he fails to cite any evidence showing his knowledge of any particular statement or warning provided by the Ameren call taker, or that any such statement caused him to disregard any warning, including the strong odor of gas itself. Under the circumstances presented, we find no error by the court.

¶ 67 d. Ameren's Procedures

¶ 68 Finally, plaintiff's amended complaint also contained an allegation that "Ameren management failed to have any system in place [to] make sure field crews responding to leaks follow AMEREN's Gas Operating Procedures." In its motion for summary determination, Ameren argued there was "no evidence to support Plaintiff's allegation, let alone [show] that it was a cause of Plaintiff's injury." It cited Jackson's testimony from his discovery deposition that through Ameren's apprenticeship program, he was trained regarding how to respond to service leaks and that, as a journeyman, he received continuing education on the subject every 12 months. Ameren also cited evidence produced in discovery that its employees were regularly trained and tested on

their response to "real world" leak scenarios.

¶ 69 In response to Ameren's claims, plaintiff argued Ameren had no "checks and balances system in place to help ensure the training is followed during an emergency." He cited the following discovery deposition testimony from John Bozarth, Ameren's director of pipeline safety and quality management:

> "Q. My question is, is there any sort of checks or balance for the guy that's out there and maybe isn't quite as sharp as you would hope he would be, somebody higher up saying, hey, you got to consider X or you have to consider Y and you have to do this or that, any sort of checks and balance like that?
>
> A. No, but we certainly encourage our journeymen to contact whomever if they have questions or if they have concerns about what they are seeing in the field. Whether that's another journeyman, whether it's their foreman, whether it's a supervisor, a trainer, we encourage people to collaborate."

¶ 70 As Ameren points out on appeal, the challenged negligence allegation from plaintiff's amended complaint references Ameren's lack of "*any* system in place" to ensure that employees responding to leaks followed its procedures. (Emphasis added.) The materials submitted by Ameren in connection with its motion for a summary determination clearly refute that broad claim. Again, under the circumstances presented, we find no error by the trial court.

¶ 71 2. *Other Pretrial Motions*

¶ 72 As stated, on appeal, plaintiff also challenges the trial court's ruling with respect to several other pretrial motions filed by Ameren to bar plaintiff from presenting certain testimony or evidence. Again, Ameren asserts plaintiff has forfeited his claims by failing to properly raise them in a posttrial motion.

¶ 73 As stated, in a jury case, a plaintiff must file a posttrial motion to preserve any challenge to the jury's verdict for appellate review. *Crim*, 2020 IL 124318, ¶ 35. Issues not raised with specificity in a posttrial motion are forfeited. 735 ILCS 5/2-1202(b) (West 2022); Ill. S. Ct. R. 366(b)(2)(iii) (eff. Feb. 1, 1994).

¶ 74 Our supreme court has identified the following three purposes of "the post-trial motion specificity rule": (1) "it allows the decision maker who is most familiar with the events of the trial, the trial judge, to review his decisions without the pressure of an ongoing trial and to grant a new trial if, on reconsideration, he concludes that his earlier decision was incorrect"; (2) "the rule allows a reviewing court to ascertain from the record whether the trial court has been afforded an adequate opportunity to reassess the allegedly erroneous rulings"; and (3) "it prevents [litigants] from stating mere general objections and subsequently raising on appeal arguments which the trial judge was never given an opportunity to consider." *Brown v. Decatur Memorial Hospital*, 83 Ill. 2d 344, 349-50, 415 N.E.2d 337, 339 (1980). With respect to the content of a posttrial motion, the supreme court has further stated as follows:

> "In order to reconsider the correctness of [its] original rulings the trial court must be adequately apprised of the grounds for the litigants' contentions that the earlier decisions were incorrect. So informing the court does not require voluminous post-trial motions. All that is necessary is a simple, succinct statement of the factual or legal basis for movant's belief that the trial court action was erroneous. Merely listing the numbers of the supposedly erroneous [jury] instructions does not, as a rule, give the trial court sufficient opportunity to make an informed reexamination of its earlier rulings." *Id.* at 350.

See *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, ¶ 86, 73 N.E.3d 1220

(stating a posttrial motion "must convey enough detail to give the judge the ability to make an informed decision about his or her earlier rulings").

¶ 75 a. The 20-foot Safety Zone

¶ 76 Plaintiff argues that the trial court erred by granting Ameren's motion *in limine* to exclude evidence that Ameren violated its own policy of having a 20-foot safety zone around a gas leak by excavating with a backhoe in the area of the downtown Canton leak. He maintains he could have presented evidence showing Ameren's field crew left the backhoe running in the area of the leak and near the Annex, as well as testimony from Leonberger, his natural gas expert, "that the Ameren crew should not have been digging within [20] feet of the leak and by doing so introduced an additional ignition source." We agree with Ameren that this issue has been forfeited.

¶ 77 In his posttrial motion, plaintiff referenced facts related to the backhoe in the portions of his motion labeled as "Introduction" and "What The Jury Did Not Hear." However, he did not otherwise refer to the 20-foot safety zone or his expert's opinions regarding the issue. Significantly, he also failed to identify the trial court's ruling on Ameren's motion *in limine* to exclude evidence related to the 20-foot safety zone as one of the seven claimed errors set forth in his motion. Because the issue was not raised with specificity in plaintiff's posttrial motion, it has been forfeited for purposes of appeal.

¶ 78 b. Exclusion of Expert Witness's Opinions

¶ 79 Plaintiff further argues that the trial court erred by granting Ameren's motion to exclude opinions from Leonberger regarding the adequacy of Ameren's warnings and training programs. Specifically, he contends the court improperly excluded Leonberger's opinions that (1) Ameren "failed to adequately, immediately, or ever, instruct the public and specifically the people in the immediate area to evacuate the area"; (2) "Ameren management allowed its call

takers to make statements during calls which lessened the importance and impact of the safety instructions when read to customers"; (3) "Ameren management failed to adequately train its field crews to follow federal law and Ameren Gas Operating procedures"; and (4) "Ameren management failed to have any system in place to make sure field crews responding to leaks followed Ameren's Gas Operating Procedures." The record reflects the court determined Leonberger lacked the expertise to render such opinions, and plaintiff challenges that determination on review.

¶ 80 Regarding forfeiture, we note that in his posttrial motion, plaintiff explicitly raised the argument that the trial court erred by limiting Leonberger's opinions at trial, identified the above opinions from Leonberger as the ones that the court excluded, and argued the court's action was error because it unjustly "limit[ed] the opinions of a qualified expert witness." We find these contentions were sufficient to preserve the issue for review and consider the merits of plaintiff's claim. See *Brown*, 83 Ill. 2d at 350 ("All that is necessary is a simple, succinct statement of the factual or legal basis for movant's belief that the trial court action was erroneous.").

¶ 81 "Expert testimony is admissible if the proffered expert is qualified by knowledge, skill, experience, training, or education, and the testimony will assist the trier of fact in understanding the evidence." *Snelson v. Kamm*, 204 Ill. 2d 1, 24, 787 N.E.2d 796, 809 (2003). "An expert need only have knowledge and experience beyond that of an average citizen." *Thompson v. Gordon*, 221 Ill. 2d 414, 429, 851 N.E.2d 1231, 1240 (2006). "[W]hether to admit expert testimony is within the sound discretion of the trial court." *Id.* at 428. A decision constitutes an abuse of discretion only when it "is arbitrary, fanciful, or unreasonable, such that no reasonable person would take the view adopted by the trial court." *People v. Lovejoy*, 235 Ill. 2d 97, 125, 919 N.E.2d 843, 858 (2009).

¶ 82 At trial, Leonberger testified for plaintiff as an expert in pipeline natural gas safety. He provided opinions regarding the nature of the leak at issue and how Ameren's field crew should have responded to what occurred.

¶ 83 On appeal, plaintiff cites evidence in the record showing Leonberger's training and experience. In particular, he notes that Leonberger was an engineer and, for 35 years, worked for the Missouri Public Service Commission in the area of gas safety. In 1990, he was promoted to the position of pipeline safety program manager. Leonberger's biography stated he had taken training courses that covered "the application and enforcement of the federal safety standards for the transportation of natural gas by pipeline." His job responsibilities included "monitoring all phases of natural gas utility plant design, installation, operation, and maintenance." Leonberger had also "investigated dozens of natural gas incidents" and participated in writing incident reports, which set forth facts, analysis, conclusions, and recommendations based on those investigations. Additionally, Leonberger's biography stated he was a current member of the National Association of Pipeline Safety Representatives, serving on committees for the organization and receiving awards for his service and contributions to pipeline safety.

¶ 84 Ultimately, the material cited by plaintiff establishes Leonberger's qualifications to testify in the capacity in which he did at trial, providing opinions regarding the nature and significance of the underground leak in this case and the appropriate response to such circumstances. However, we agree with Ameren that, on appeal, plaintiff has failed to identify—or advance any argument showing—how Leonberger was particularly qualified to render expert opinions on the adequacy or efficacy of Ameren's training program or the warnings it provided to the public. The opinions excluded by the court pertained to both such subjects. Accordingly, we find plaintiff has failed to establish that the court abused its discretion.

¶ 85 Moreover, we note that Leonberger's excluded opinions also concerned, at least in part, the negligence allegations that were stricken by the trial court in connection with Ameren's motion for a summary determination. For the reasons already expressed, plaintiff has failed to establish that the court erred in striking those portions of his amended complaint. Accordingly, the court's ruling striking those negligence claims was proper and evidence pertaining to those allegations was appropriately excluded.

¶ 86 c. Ameren Safety Guidelines and Standard of Care

¶ 87 Next, plaintiff argues the trial court erred by granting Ameren's motion *in limine* to prevent him from offering evidence or argument implying that a deviation from Ameren's internal practices and policies constituted "a breach of the standard of care." However, as Ameren correctly points out, this claim of error was not raised at all in plaintiff's posttrial motion. As a result, it has been forfeited.

¶ 88 d. Ameren's CEO

¶ 89 Plaintiff further argues that the trial court erred by barring him from taking the discovery deposition or presenting the trial testimony of Ameren's CEO, Richard Mark. Plaintiff raised this issue in his posttrial motion, identifying the specific actions taken by the court that he found were in error and asserting that he wanted to take Mark's deposition "based upon [his] theory of the case that 'safety begins at the top.' " We find plaintiff's allegations were at least minimally sufficient to preserve the issue for appellate review and decline to find the issue forfeited.

¶ 90 The record shows that in November 2019, plaintiff issued a notice of deposition for Mark. Ameren moved to quash the deposition notice, arguing Mark had no unique or personal knowledge relating to the occurrence at issue and maintaining its CEO's "deposition would serve no purpose other than to harass Ameren and cause unnecessary expense." In December 2019, the

trial court granted Ameren's motion to quash on the basis that Mark lacked any "unique information" regarding the matter at issue. Thereafter, plaintiff took the discovery deposition of John Bozarth, Ameren's director of pipeline safety and quality management, who was identified as the person with the most knowledge about "training Ameren's field crews for responding to gas leaks."

¶ 91 In March 2022, plaintiff filed a motion to permit Mark's deposition along with a notice of deposition. He asserted he should be allowed to depose Mark as "[s]afety begins and ends at the top" and Bozarth's deposition "revealed only evasion and no particular information regarding field workers['] instructions or *** Federal, State, and Ameren regulations." Following a hearing, the trial court quashed the deposition notice, finding the circumstances in the case had not changed and it was not "relevant or appropriate" for plaintiff to depose Mark or call him as a witness at trial.

¶ 92 Illinois Supreme Court Rule 201(b)(1) (eff. July 1, 2014) provides that "a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party." "Discovery should be denied where there is insufficient evidence that the discovery is relevant." *Korte & Luitjohan Contractors, Inc. v. Erie Insurance Exchange*, 2022 IL App (5th) 210254, ¶ 27, 202 N.E.3d 955. Additionally, "[a] trial court is given great latitude in determining the scope of discovery, and discovery orders will not be disturbed absent an abuse of discretion." (Internal quotation marks omitted.) *Enbridge Pipeline (Illinois), LLC v. Temple*, 2019 IL App (4th) 150346, ¶ 45, 144 N.E.3d 142.

¶ 93 On appeal, both parties additionally cite federal case authority that is applicable to requests to depose high-level executives of an organization. Such authority provides that "[w]hen

a party seeks the deposition of a high-level executive (a so-called 'apex' deposition), courts have observed that such discovery creates a tremendous potential for abuse or harassment." (Internal quotation marks omitted.) *Apple Inc. v. Samsung Electronics Co., Ltd*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). A court "has discretion to limit discovery where the discovery sought can be obtained from some other source that is more convenient, less burdensome, or less expensive." (Internal quotation marks omitted.) *Id.*

> "In determining whether to allow an apex deposition, courts consider (1) whether the deponent has unique first-hand, non-repetitive knowledge of the facts at issue in the case and (2) whether the party seeking the deposition has exhausted other less intrusive discovery methods. However, a party seeking to prevent a deposition carries a heavy burden to show why discovery should be denied. Thus, it is very unusual for a court to prohibit the taking of a deposition altogether absent extraordinary circumstances. When a witness has personal knowledge of facts relevant to the lawsuit, even a corporate president or CEO is subject to deposition. A claimed lack of knowledge, by itself it is insufficient to preclude a deposition." (Internal quotation marks omitted.) *Id.*

See *In re Bridgestone/Firestone, Inc., Tires Products Liability Litigation*, 205 F.R.D. 535, 536 (S.D. Ind. 2002) (noting "[f]ederal courts have permitted the depositions of high level executives when conduct and knowledge at the highest corporate levels of the defendant are relevant in the case," but not when the case "involves an individual personal injury, employment, or contract dispute with which the 'apex' official had no personal involvement").

¶ 94 Here, we find no error by the trial court. The record shows it rejected plaintiff's attempts to depose Mark on the basis that he had no "unique information" that pertained to the

matter at issue. On review, plaintiff does not suggest that Mark had any firsthand knowledge of the November 2016 occurrence, and he makes only general and vague assertions regarding the information Mark could provide, stating that " 'safety starts at the top' " and Ameren's CEO "is ultimately in charge of safety for Ameren." Further, plaintiff acknowledges that he "worked his way up the chain *** by taking the depositions of field workers, supervisors, and lower-level executives." He makes no argument that Mark could have provided any additional information that would have been both relevant and nonrepetitive from what had already been discovered. Under these circumstances, plaintiff has failed to establish an abuse of discretion by the court.

¶ 95 D. Exclusion of Testimony From Fire and Police Personnel

¶ 96 On appeal, plaintiff also argues the trial court erred by barring him from presenting the testimony of five witnesses: (1) Assistant Fire Chief Anthony Plummer, (2) Police Chief Rick Nichols, (3) Detective Candi Buhl, (4) Patrolman Mike Shippert, and (5) Lieutenant Greg Spahn. He contends the witnesses were properly disclosed and that they were "unbiased public officials, with relevant firsthand knowledge about the explosion."

¶ 97 Initially, both Ameren and Mid Century argue that plaintiff has forfeited this issue by inadequately raising it in his posttrial motion. In his posttrial motion, plaintiff alleged the trial court erred by barring testimony at trial from "three important Canton Fire and Police officials"—Plummer, Nichols, and Buhl. Although his argument on the subject was brief, he raised similar claims to the ones he now raises on appeal, suggesting the court's action was in error because the witnesses were properly disclosed and had firsthand knowledge of the explosion. Under these circumstances, we decline to find forfeiture as to the three witnesses specified in the motion—Plummer, Nichols, and Buhl. However, we do find forfeiture as to the two remaining witnesses named by plaintiff on appeal but not previously identified during posttrial proceedings—Shippert

and Spahn.

¶ 98 The record in this case shows the trial court granted defendants' motions to exclude testimony from the challenged witnesses because (1) they were not properly disclosed as lay witnesses pursuant to Illinois Supreme Court Rule 213(f)(1) (eff. Jan. 1, 2018) and (2) their proposed testimony was cumulative under Illinois Rule of Evidence 403 (eff. January 1, 2011).

¶ 99 Rule 213(f)(1) (eff. Jan. 1, 2018) states as follows:

> "Upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial and must provide the following information:
>
> (1) Lay Witnesses. A 'lay witness' is a person giving only fact or lay opinion testimony. For each lay witness, the party must identify the subjects on which the witness will testify. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party's knowledge of the facts known by and opinions held by the witness."

¶ 100 The purpose of Rule 213(f) "is to prevent unfair surprise at trial, without creating an undue burden on the parties before trial." Ill. S. Ct. R. 213(f), Committee Comments (March 28, 2002). "An answer must describe the subjects sufficiently to give 'reasonable notice' of the testimony, enabling the opposing attorney to decide whether to depose the witness, and on what topics." *Id.* For example, if the lay witness was an eyewitness to a car accident, "a proper answer might state that the witness will testify about: '(1) the path of travel and speed of the vehicles before impact, (2) a description of the impact, and (3) the lighting and weather conditions at the time of the accident.' " *Id.* "The answer would not be proper if it said only that the witness will testify about: 'the accident.' " *Id.* "The information disclosed in answer to a Rule 213(f)

interrogatory *** 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).

¶ 101 "The disclosure requirements of Rule 213 are mandatory, and parties must strictly comply with them." *Granville Tower Condominium Ass'n v. Escobar*, 2022 IL App (1st) 200362, ¶ 52, 204 N.E.3d 873. "Whether a party violated a discovery rule is an issue of law that we review *de novo*." *Boyd v. City of Chicago*, 378 Ill. App. 3d 57, 68, 880 N.E.2d 1033, 1042 (2007).

¶ 102 "[T]he failure to comply with Rule 213 does not automatically require the exclusion of a noncomplying party's witnesses or testimony." *Granville Tower*, 2022 IL App (1st) 200362, ¶ 52. When determining whether to allow an undisclosed witness to testify, courts must consider: "(1) the surprise to the adverse party; (2) the prejudicial effect of the testimony; (3) the nature of the testimony; (4) the diligence of the adverse party; (5) the timely objection to the testimony; and (6) the good faith of the party calling the witness." *Id.*; see *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 110, 806 N.E.2d 645, 652 (2004). Ultimately, "[t]he admission of evidence pursuant to Rule 213(f) lies within the trial court's discretion and will not be reversed absent an abuse of discretion." *Granville Tower*, 2022 IL App (1st) 200362, ¶ 52; see *Sullivan*, 209 Ill. 2d at 110 ("The decision whether or not to impose sanctions lies within the sound discretion of the trial court, and that decision will not be reversed absent an abuse of discretion.").

¶ 103 First, we find no error in the trial court's determination that plaintiff failed to comply with Rule 213(f)(1). In his Rule 213(f) disclosures, plaintiff set forth the names of approximately 190 lay witnesses. He prefaced the vast majority of those named individuals, including the witnesses at issue on appeal, with the following comment:

> "Plaintiff may call any of the following witnesses, previously disclosed by the City of Canton in Respondent in Discovery's Answers to Plaintiff['s] Interrogatories

served March 16, 2018. Plaintiff expects each witness to testify consistently within the context of each witnesses' disclosed role and/or reports previously disclosed."

In listing the disclosed individuals, he categorized them by employment. Relevant to this appeal, he set forth lists of "POLICE DEPARTMENT employees who responded following the November 16, 2016[,] explosion" and "City of Canton FIREFIGHTERS [who] were present following the explosion."

¶ 104 In *Kim v. Mercedes-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 453-54, 818 N.E.2d 713, 721 (2004), the First District addressed a similar issue regarding compliance with Rule 213(f). The court noted that detailed disclosure for lay witnesses is not required under the rule. *Id.* at 454. However, it found the "plaintiff's notice that he would testify as to matters set forth in his complaint [was] a generalized statement akin to the committee comments' example" of an improper disclosure, *i.e.*, stating that an eyewitness would be "merely testifying about an 'accident.' " *Id.* Plaintiff's answers in the instant case present the same type of improper generalized statement. Neither plaintiff's references to the lay witnesses' "disclosed role" or "unspecified reports," nor his notation of their presence at the scene following the explosion sufficiently described the subject of the witnesses' proposed testimony. Accordingly, we find the record clearly shows plaintiff violated Rule 213(f)(1).

¶ 105 Second, we also find no error with respect to the trial court's decision to bar the testimony of Plummer, Nichols, and Buhl. Notably, plaintiff does not identify or provide any reasoned discussion of the relevant factors for consideration when determining whether a witness should be excluded as a result of Rule 213 noncompliance. We note that he asserts his excluded witnesses would have provided information at trial regarding various matters, including the condition of the scene after the explosion, the presence of escaping gas after the explosion, the

status and location of the backhoe, the occurrence of multiple blasts, and the oversight of Sure Shot's work by Mid Century. Plaintiff also argues that defendants had relevant reports of the proposed witnesses in their possession, suggesting that they would not have been surprised or prejudiced by the witnesses' testimony at trial. However, plaintiff's action in disclosing a large number of lay witnesses without any description of their proposed testimony would necessarily have frustrated defendants' ability to properly prepare for trial by determining which of those witnesses to depose and on what specific topics. These circumstances do suggest surprise and prejudice to defendants.

¶ 106 Ultimately, plaintiff's contentions on appeal are insufficient to establish an abuse of discretion by the trial court. Because we find the court committed no error in excluding the testimony of Plummer, Nichols, and Buhl on the basis of plaintiff's Rule 213(f)(1) violations, we need not address the alternative basis for the exclusion of such evidence under Illinois Rule of Evidence 403 (eff. January 1, 2011).

¶ 107 E. Exclusion of Expert Medical Opinion Testimony

¶ 108 Plaintiff also argues on appeal that the trial court erred by barring testimony from his medical expert, Dr. Collins, that plaintiff suffered from a condition called chronic lymphocytic leukemia and that his leukemia was aggravated by stress caused by the explosion. However, as defendants point out, this claim of error was not raised in plaintiff's posttrial motion. Accordingly, we find the issue has been forfeited and decline to address it. See 735 ILCS 5/2-1202(b) (West 2022); Ill. S. Ct. R. 366(b)(2)(iii) (eff. Feb. 1, 1994).

¶ 109 F. The Jury's Finding in Favor of Mid Century

¶ 110 Finally, on appeal, plaintiff challenges the jury's verdict in favor of Mid Century, arguing it was (1) inconsistent with its finding of liability against Cahill and Sure Shot and

(2) against the manifest weight of the evidence. However, as Mid Century points out, plaintiff failed to raise either contention in his posttrial motion. Thus, we find plaintiff's arguments have been forfeited. See *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 130314, ¶ 42, 10 N.E.3d 354 (finding the plaintiff's claim that the jury's verdict was against the manifest weight of the evidence was forfeited on appeal because the plaintiff failed to raise the argument in her posttrial motion).

¶ 111 III. CONCLUSION

¶ 112 For the reasons stated, we affirm the trial court's judgment.

¶ 113 Affirmed.