NO. 122974

IN THE SUPREME COURT OF ILLINOIS

ZACHARY STANPHILL, as Administrator of the Estate of KEITH SYLVESTER STANPHILL, deceased,

Plaintiff-Appellee,

v.

LORI ORTBERG, individually, and as an agent of ROCKFORD MEMORIAL HOSPITAL d/b/a ROCKFORD MEMOIRAL HEALTH SYSTEMS, and ROCKFORD MEMORIAL HOSPITAL d/b/a ROCKFORD MEMORIAL HEALTH SYSTEMS,

Defendants-Appellants,

Appeal from the Appellate Court of Illinois, Second Judicial District
No. 2-16-1086

Original Appeal from the Circuit Court of the Seventeenth Judicial Circuit, Winnebago County
No. 14 L 35

The Honorable
J. Edward Prochaska,
Judge Presiding.

AMICUS CURIAE BRIEF OF ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE

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I
POINTS AND AUTHORITIES

II
ARGUMENT

A special interrogatory serves "as guardian of the integrity of a general verdict in a civil case." *Simmons v. Garces*, 198 Ill.2d 541, 555 (2002). "It tests the general verdict against the jury's determination as to one or more specific issues of ultimate fact." *Id.* A special interrogatory is proper only if: (1) it relates to an ultimate issue of fact upon which the rights of the party depend, and (2) an answer responsive thereto is inconsistent with some general verdict that might be returned. *Id.*

The special interrogatory at issue here asked "Was it reasonably foreseeable to Lori Ortberg on September 30, 2005 that Keith Stanphill would commit suicide on or before October 9, 2005?" (R. 1942). The Appellate Court correctly found that the jury's answer of this interrogatory in the negative was not inconsistent with the general verdict. *Stanphill v. Ortberg*, 2017 IL App (2d) 161086, ¶29. The Appellate Court further found that the special interrogatory was not in the proper form because it focused on whether Keith Stanphill's suicide was foreseeable to the specific defendant when the proper test was whether Keith's suicide was foreseeable to a reasonable person or a reasonable licensed clinical social worker. *Id.* at ¶33.

I. THE SPECIAL INTERROGATORY MISAPPLIES THE LAW OF PROXIMATE CAUSE.

The special interrogatory addressed the issue of proximate cause. The term "proximate cause" describes two distinct requirements: cause in fact and legal cause. *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 455 (1992). Cause in fact is established when the defendant's conduct was a material element and a substantial factor in bringing about the injury. *Id.* "Legal cause is essentially a question of foreseeability: a negligent

act is a proximate cause of an injury if the injury is of a type which a reasonable man would see as a likely result of his conduct." *Id.* at 456. Proximate cause is ordinarily a question of fact for the jury to resolve. *Id.*

The special interrogatory here focused solely upon the issue of legal causation. This Court has consistently held that the legal causation component of proximate cause is an objective standard based upon what a reasonable person would foresee. *City of Chicago v. Baretta U.S.A. Corp.*, 213 Ill.2d 351, 406 (2004) ("The relevant inquiry is whether the injury is of a type that a reasonable person would see as a likely result of his conduct."), *Williams v. University of Chicago Hospitals*, 179 Ill.2d 80, 87 (1997) (citing *Scott & Fetzer Co. v. Montgomery Ward & Co,* 112 Ill.2d 378, 393 (1986) for the proposition that "Thus, '[i]f the result is one that an ordinarily prudent person would have foreseen as likely to occur, then the party will be held responsible, even if the precise injury which resulted is not foreseen.'"), *Ney v. Yellow Cab Co.*, 2 Ill.2d 74, 79 (1954) ("The injury must be the natural and probable result of the negligent act or omission and be of such a character as an ordinarily prudent person ought to have foreseen as likely to occur as a result of the negligence, although it is not essential that the person charged with negligence should have foreseen the precise injury which resulted from his act."), *Neering v. Illinois Cent. R. Co.*, 383 Ill. 366, 380 (1943) (same), *Illinois Cent. R. Co. v. Oswald*, 338 Ill. 270, 273 (1930) (same).

The fact that a defendant did not personally foresee that her conduct would cause a plaintiff's injury is not by itself dispositive of the foreseeability issue, as this Court has expressly and repeatedly stated that the person charged with negligence does not need to have foreseen the precise injury which resulted from her act in order for the plaintiff to

meet its burden of proof that the injury was foreseeable. *See Williams*, 179 Ill.2d at 87, *Ney*, 2 Ill.2d at 79. Rather, the test is whether a *reasonable person* would foresee that the plaintiff's injury is a type that was a likely result of the defendant's negligence. *Williams* at 87, *Ney* at 79.

In this case, the special interrogatory did not properly address the legal cause component of proximate cause because it did not ask if an injury, including suicide, was foreseeable to a reasonable person as a result of Ortberg's negligence. Instead, by only focusing the jury's attention upon what was foreseeable to Ortberg herself, the special interrogatory misstated the law on proximate cause and presented the jury with a question that was not dispositive of the entire case, as Ortberg's own failure to foresee Keith's suicide does not determine as a matter of law whether a reasonable person would have foreseen injury to Keith as a likely result of Ortberg's negligence. To hold otherwise requires the defendant to personally foresee the specific injury – a requirement that this Court has consistently stated is *not* determinative of legal causation. *See Williams,* 179 Ill.2d at 87, *Ney*, 2. Ill.2d at 79.

The Appellate Court properly recognized the distinction between what the defendant foresaw and what a reasonable person should have foreseen. *Stanphill* at ¶33 Because the special interrogatory did not accurately state the law of proximate cause and ask the jury whether it was foreseeable to a reasonable person that Ortberg's acts or omissions would cause injury to Keith, it was not in the proper form, it was misleading, and its answer was not inconsistent with the general verdict.

II. THE ERRONEOUS SPECIAL INTERROGATORY IS NOT CURED BY OTHER JURY INSTRUCTIONS.

Defendants and *Amicus Curiae* Illinois Association of Defense Trial Counsel implicitly recognize that, as drafted, the special interrogatory does not accurately state the law on legal causation, but argue that the interrogatory must be construed together with the jury instructions, and especially IPI 105.01, which instructed the jury to compare Ortberg's conduct to that of a reasonably careful licensed clinical social worker. (R. 4781, IPI 105.01.) The jury was specifically told that Ortberg would be professionally negligent if she did something that a reasonably careful licensed clinical social worker would not do or if she failed to do something that a reasonably careful licensed clinical social would have done. *Id.*

There is nothing in IPI 105.01 or any of the other jury instructions which informed the jury that, when it was asked in a special interrogatory whether it was reasonably foreseeable to Ortberg that Keith would commit suicide, that the jury should disregard the express language of the special interrogatory, ignore Ortberg's subjective knowledge, and instead answer the entirely different question of whether it was foreseeable to a reasonable person (or a reasonably careful licensed clinical social worker) that Keith would be injured. That the jury was instructed to compare Ortberg's conduct to that of a reasonably careful licensed clinical social worker in determining whether there was professional negligence does not mean that the jury was also instructed that, when the special interrogatory referenced Ortberg by name, it really meant a reasonable person or a reasonably careful licensed clinical social worker.

This Court stated in *Simmons* that a special interrogatory should be read in context with the Trial Court's other instructions to determine how the special

interrogatory was understood. 198 Ill.2d at 563. Nothing in the other jury instructions provides any basis to conclude that the jury interpreted the phrase "reasonably foreseeable to Lori Ortberg" to mean "reasonably foreseeable to a reasonable person," "reasonably foreseeable to a reasonably careful licensed clinical social worker," or anything other than "reasonably foreseeable to Lori Ortberg."

Terms in special interrogatories are to be understood in their conventional sense. *Saldana v. Wirtz Cartage Co.*, 74 Ill.2d 379, 388 (1978). The special interrogatory only asked about what Ortberg subjectively found to be reasonably foreseeable and not what was foreseeable to a reasonable person or a reasonable licensed social worker. Because the special interrogatory did not accurately state the law on proximate cause, the Appellate Court correctly found that the special interrogatory was not in proper form and its finding was not irreconcilably inconsistent with the general verdict.

III
CONCLUSION

Amicus curiae Illinois Trial Lawyers' Association respectfully requests that this Honorable Court affirm the decision of the Appellate Court.

Respectfully Submitted,

ILLINOIS TRIAL LAWYERS ASSOCIATION

By: _____
One of Its Member Attorneys

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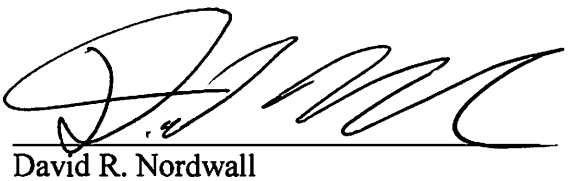
CERTIFICIATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5 pages.



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