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2026 IL App (5th) 260250

NO. 5-26-0250

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

GRAYSON KLUCKER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 24-LA-686
	)	
ASHTON ZOBRIST,	)	Honorable
	)	Patrick G. King,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BOLLINGER delivered the judgment of the court, with opinion.
Presiding Justice Cates and Justice Clarke concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff Grayson Klucker was awarded compensatory and punitive damages by a jury in connection with a negligence action brought against defendant Ashton Zobrist. On appeal, defendant argues that the trial court erred by permitting plaintiff to plead willful and wanton conduct and seek punitive damages and by excluding evidence of plaintiff's use of marijuana for self-medication. Defendant also argues that the compensatory and punitive damages awards were excessive. We affirm the trial court's order granting plaintiff leave to plead willful and wanton conduct and seek punitive damages and order excluding evidence of plaintiff's marijuana use. We further affirm the jury's award of punitive damages and compensatory damages for emotional distress and pain and suffering. We reduce and remit the damages award with respect to disfigurement and loss of normal life.

¶ 2 I. BACKGROUND

¶ 3 On May 15, 2024, plaintiff Grayson Klucker filed a personal injury action against defendant Ashton Zobrist arising from a motor vehicle accident that occurred on July 4, 2023, in Madison County. In this original complaint, plaintiff alleged that he was traveling westbound on Broadway approaching the Route 160 intersection while operating a 2022 Kawasaki KLX230. He alleged that he approached the intersection in the left lane without a stop sign and possessed the right of way to make a left turn onto Route 160 from Broadway.[1] Plaintiff further alleged that defendant was proceeding northbound on Route 160 in a 2002 Ford Pickup and was required to stop at a stop sign. He claimed that defendant did not have the right of way, failed to stop at the stop sign, and struck plaintiff's motorcycle, pushing it across the roadway into the front of another vehicle stopped on Deal Street. Plaintiff reported being ejected from his vehicle and losing consciousness. He claimed to have "suffered severe and life-threatening bodily injuries, including but not limited to altered mental state, concussion, abrasions of multiple areas of the body, closed fractures of left tibia and fibula, closed bicondylar fracture of left tibia, acute pain, left lower leg and knee Morel lesions, psychological injury and emotional distress." He alleged that his injuries were evolving and that he continued to receive treatment. Plaintiff asserted claims based on negligence and negligence *per se*, each seeking damages exceeding $50,000.

¶ 4 A. Pretrial

¶ 5 On September 30, 2025, plaintiff filed a motion for leave to amend the complaint to include a claim for punitive damages. He contended that the developed evidence clearly demonstrated that defendant "ignored a stop sign and gunned it through a major intersection, blindly." He asserted

[1]Plaintiff later filed an amended complaint changing this allegation to state that plaintiff approached the intersection of Broadway and Route 160 in the right through lane (with no intention of turning left).

that such conduct was "as reckless of conduct as one can feasibly engage in when operating several thousand pounds of motorized steel on the public roadways."

¶ 6 In support of his motion, he included deposition testimony from defendant and several witnesses. Defendant admitted that he was required to stop at the stop sign, that cross-traffic had the right of way, and that he nonetheless proceeded into the intersection and struck plaintiff's motorcycle.

¶ 7 Deborah Workman testified that she was a passenger in her husband's vehicle at the front of the left-turn lane on Broadway. She testified that when her husband began to turn left onto Route 160, defendant pulled out in front of them, causing her husband to slam on his brakes to avoid a collision. Defendant went through the intersection and collided with plaintiff.

¶ 8 Another eyewitness, Amanda Garcia, who was also a passenger in a vehicle driven by her husband, stated that they were waiting in line in the left-turn lane. She observed a black pickup attempting to cross Broadway and noted that it "lunged four times into the intersection, and after the fourth lunge, he then 'gunned it' and drove through the intersection," resulting in a collision with plaintiff. She affirmed that plaintiff was not exceeding the speed limit and that he could not have done anything to avoid the collision.

¶ 9 A third witness, Carlie Stroteheide, was positioned in the third vehicle in line, waiting to make a left turn. She observed the motorcycle and heard honking at the same time. Suddenly, a truck appeared, and she saw the motorcycle go beneath the truck before being propelled into the air; she stated, "[H]e got launched."

¶ 10 Plaintiff asserted in his motion to amend that there existed "a reasonable likelihood that Plaintiff can prove facts at trial that are sufficient to support an award for punitive damages" given defendant's conduct. Plaintiff argued that defendant was aware of his duty to yield to plaintiff,

knew that he could not see if anyone was approaching the intersection, and yet entered the intersection recklessly. Plaintiff requested leave to amend his complaint to include a claim for punitive damages.

¶ 11 Defendant objected to the motion asserting that plaintiff was unable to demonstrate a reasonable likelihood of establishing facts at trial sufficient to warrant an award of punitive damages. He argued that he stopped at the stop sign for several minutes prior to entering the intersection, yielded to cross-traffic, looked both ways, and proceeded through the intersection only after believing it to be safe. Defendant did not observe any cross-traffic coming from westbound Broadway, including plaintiff, because traffic from the left-turn lane was obstructing traffic from the westbound through lane. Plaintiff would not have been able to travel straight westbound on Broadway through the intersection without passing cars on the shoulder or navigating around the backed-up traffic. He also cited the deposition testimony of Mary Roberts, who stated that she first saw plaintiff when he was traveling on the shoulder of the westbound lane "because that is what caught" her attention. She confirmed that plaintiff was passing vehicles within the westbound lane.

¶ 12 A hearing was held on the motion. After hearing arguments of counsel, the trial court granted the motion finding there were factual disputes for the jury's consideration as to whether the evidence rose to the level of willful and wanton conduct. Plaintiff thereafter filed an amended complaint which included a willful and wanton conduct count and punitive damages claim. Plaintiff removed the negligence *per se* count.

¶ 13 At a subsequent pretrial hearing, the parties argued their positions concerning the admissibility of plaintiff's marijuana use. Plaintiff contended that he would not receive a fair trial if defendant were permitted to assert that he regularly used marijuana. He noted that no evidence

indicated that he was impaired on the day of the incident. Plaintiff referenced excerpts from the testimony of Dr. Stachniak, defendant's expert witness, in which he testified that the relevance of plaintiff's marijuana consumption was its role in managing his anxiety. Accordingly, plaintiff withdrew his claim that his anxiety worsened following the incident. Plaintiff further stated that the expert did not establish a connection between marijuana use and the exacerbation of depression or post-traumatic stress disorder (PTSD).

¶ 14 In response, defendant acknowledged that he was not contending that plaintiff was impaired at the time of the incident, but rather that marijuana use was relevant to plaintiff's claim for "mental disorders which worsened because of the accident" and to "show that he was self-medicating prior to the accident." Defendant further argued that his expert opined that plaintiff's self-medication was preexisting and "goes to all of the disorders, the PTSD, anxiety, etc." He pointed out that plaintiff intended to testify regarding other medications he was taking for his mental conditions. Defendant agreed to exclude any opinions concerning cannabis use disorder. Additionally, defendant asserted that his expert testified that plaintiff used marijuana for self-medication of his anxiety symptoms, which were integral to a diagnosis of PTSD. Defendant argued that it was probative "because it shows the existence of and severity of his preexisting mental health conditions."

¶ 15 After continued argument along those same lines, the trial court ruled as follows:

> "The question is whether—there probably is some probative value. The question is whether it's substantially outweighed by the unfair prejudice.
>
> I'm concerned it will be prejudicial and probably to an extent unfairly. I'm not sure how we would thread the needle. At this point—I will take it up later in trial if it comes up

or if a door opens that you think that has to be opened. I don't want to close the door completely.

I think based upon—some of it is going to be based upon testimony, and some is going to be cross-examination and plaintiff's testimony, but I'd say initially we'll say that any use of marijuana will be barred at this time, but we can take it up on a side bar and we can definitely take it up if the door opens to where it could become a relevant factor."

¶ 16 B. Trial

¶ 17 The jury trial commenced on November 3, 2025, and spanned four days. We summarize only the witnesses and testimony relevant to the issues on appeal.

¶ 18 1. Carlie Stroteheide

¶ 19 The videotaped evidence deposition of Stroteheide was presented at trial. Although we were not provided with the actual videotape shown to the jury, we were furnished with a transcript of the deposition. Stroteheide testified that she was in the left turn on Route 160 at the time of the collision. She was the last vehicle in line to turn left onto Broadway. As she entered the left-turn lane, she observed plaintiff's motorcycle through her rearview mirror slow down and continue straight toward the intersection. Plaintiff passed her in the middle of the through lane at approximately 30 miles per hour, within the speed limit, and was not engaging in any unsafe maneuvers. Plaintiff stayed within his lane and did not cross over the curb. Although she did not witness the collision, she heard screeching and saw the motorcycle propelled beneath a truck, with plaintiff thrown into a pole. During cross-examination, she stated that she did not observe defendant because the vehicles in front of her obstructed her view and therefore could not provide any opinions regarding his actions before the incident.

¶ 20 2. Amanda Garcia

¶ 21 Garcia testified that at the time of the collision, she was in an elevated truck driven by her husband located in the left-turn lane on Route 160. She observed plaintiff pass by them in the through lane to her right. The speed limit was 35 miles per hour, and plaintiff appeared to be traveling at the same pace as the surrounding traffic, with no indications of speeding. Two or three vehicles were ahead of her in the turn lane, so they had to wait their turn. By the time plaintiff overtook them on the right, they were already stopped. She observed a truck at the stop sign for northbound Route 160 that appeared to "lunge forward" slightly three or four times. During the fourth lunge, the truck was situated in the middle of the intersection. She witnessed the truck "gun it through the rest of the intersection." Plaintiff was not maneuvering around a stopped line of vehicles on the shoulder. She contacted emergency services via 911 while her husband exited the vehicle to assist.

¶ 22 On cross-examination, she acknowledged that she did not observe the collision. She described what she meant by lunging forward by "[l]ike he stabbed the gas pedal and immediately hit the brake again, kind of like lurching forward." By the fourth lunge defendant was halfway into the intersection. He then gunned it on the fourth lunge. During redirect examination, she stated that plaintiff had been traveling in the middle of his lane.

¶ 23 3. Deborah Workman

¶ 24 The videotaped evidence deposition of Workman was played next. Her vehicle was traveling westbound along Broadway in the left-turn lane. She was a passenger, with her husband operating the vehicle. They were the first vehicle in line to turn left. They turned at the same time defendant started to proceed into the intersection, and she exclaimed "stop." She did not observe the truck until it suddenly pulled in front of their vehicle. By the time she saw the truck, it was

already within the intersection. She observed the truck cross and then saw the motorcycle, after which she screamed, anticipating the imminent event. She stated that the truck did not look like "he was dashing in front of us, it just looked like he pulled in front of us." She observed the truck strike the motorcycle. She did not notice the motorcycle traveling around cars on the shoulder. She witnessed plaintiff being propelled into the air.

¶ 25 Workman observed defendant run to the scene and he stated that he had not seen plaintiff. He appeared shaken and concerned but did not attempt to flee. Plaintiff attempted to stand while the individual assisting him repeatedly advised him to remain lying down. He moved his leg and screamed. She had no opinions regarding the speed of the truck or the motorcycle. She took notes immediately after the accident that indicated that defendant said he did not see plaintiff and that the motorcycle rider was traveling at a high speed.

¶ 26 4. Bailey Mettler

¶ 27 Bailey Mettler testified that on the date of the incident, defendant was her boyfriend, and she was a passenger in his truck. They had just departed from Dairy Queen and reached a two-way stop. Because of heavy traffic, they came to a complete stop. The individual in the left-turn lane signaled to defendant to proceed, prompting him to cautiously advance. Defendant had been stopped at the intersection for several minutes prior to entering it. She did not observe plaintiff until the moment of impact. Defendant did not gun or lunge through the intersection, nor did he deliberately strike plaintiff.

¶ 28 5. Mary Roberts

¶ 29 Roberts observed the incident, stating that she was at the stop sign on Deal Street attempting to merge into the eastbound lane when "a motorcycle came flying by," and it unexpectedly collided with the front of her bumper. She was unaware of the motorcycle's exact

speed or whether it was exceeding the speed limit but described it as "a good amount of speed." The motorcycle caught her attention because it was on the shoulder to her left. She did not observe the collision. She exited her vehicle to check on plaintiff, who was breathing and communicating at the time. She stated that she had not seen defendant's truck prior to the collision.

¶ 30 6. Defendant

¶ 31 Defendant testified that he was enrolled at Southern Illinois University Edwardsville pursuing a degree in civil engineering. He was dating Bailey Mettler, who was a passenger in his truck during the collision. He was operating his grandfather's Ford F-150, which weighed approximately 5,000 pounds. Defendant had raced at Highland Speedway for several years and raced late-model cars since age 14. He acknowledged that, at a stop sign, he must come to a complete stop and remain stationary until it is his turn to proceed, recognizing that cross-traffic has the right of way. He also agreed that he must wait at a stop sign as long as necessary until all traffic has cleared and it was safe to proceed. Furthermore, he concurred that it would violate traffic laws and be potentially hazardous to pull out of a stop sign at an intersection in a manner that would cut off cross-traffic with the right of way.

¶ 32 Defendant did not believe that his actions contributed to the incident and maintained that he was not at fault. Upon arriving at the intersection, he intended to proceed straight across. He stopped at the stop sign for two to three minutes and crept forward to improve his view of the road. He acknowledged that he did not have the right of way at the intersection. He indicated that the vehicle at the front of the left-turn lane signaled him to proceed. The left-turn lane was congested, backing up into the through lane. He did not observe plaintiff until the moment of impact. From his position, he could see the westbound through lane in front of Workman's car. Additionally, he could see through the gaps between vehicles in the left-turn lane as he crept forward slightly.

However, when he first approached the stop sign, he could not see beyond the left-turn lane. He consciously decided to proceed through the intersection, aware of another lane and understanding that both the left-turn lane and the westbound through lane had the right of way. He denied lunging or gunning it into the intersection. Plaintiff sideswiped his truck, resulting in a collision. The dent was situated on the front middle bumper of his vehicle. The impact occurred in plaintiff's lane of travel.

¶ 33 7. Plaintiff

¶ 34 Plaintiff testified that at the time of the collision, he had recently graduated from high school and had been accepted into the University of Alabama, where he intended to pursue a degree in business. He did not recall the accident. His last memory was watching fireworks earlier that evening. His next recollection was waking up in a hospital bed, where he observed six or seven rods inserted into his leg to stabilize it. He did not know how he had arrived there. Photographs depicting the condition of his leg at that time were shown, including an image of a gash on his hip. Initial treatment primarily involved pain management. He underwent four surgeries, with the first three occurring within the first month. His leg sustained multiple breaks, and his tendons and ligaments were torn. He was hospitalized for one month. The period between surgeries was miserable, characterized by severe, indescribable pain. During this time, he was mostly confined to bed and unable to move about on his own. He was only able to go outside on three occasions. Upon discharge, he used a wheelchair for several months. When he commenced therapy, it was highly painful and offered limited benefit.

¶ 35 In January 2024, he sought to attend the University of Alabama and stated that his physicians had advised him to do so. He tried to walk to the bookstore, but upon experiencing significant pain, he "kind of stopped and realized how much pain I was in, so I just down and I—

I just broke down." He felt a sense of inadequacy and believed he had not progressed as far in his recovery as expected. Subsequently, he decided to return home. He made another attempt to resume studies in the fall of 2024. This was challenging due to the campus's size, numerous hills, and the fact that his class was 0.9 miles from his dormitory. He tried to use electric bikes; however, they were often unavailable due to high student demand, so he mostly walked. He believed that the University of Alabama was too large and that his academic performance was declining to C and D grades. He decided to return home around Halloween 2024. Between his initial departure from college and his return in the fall, he was employed at a roofing company, handling office tasks and deliveries. As of the date of the trial, he was enrolled at Ranken Technical School and was actively engaged in his studies and experiences.

¶ 36 His ankle mobility remains impaired. He has sensitive scars; some are completely numb, while others tingle when pressure is applied. He continues to wear a brace daily beneath his trousers. His leg is misaligned and angled, and he cannot straighten it as fully as his right leg. He experiences persistent daily pain and applies ice when swelling occurs. He experiences pain while walking and ascending stairs. He doubts that his leg will ever return to its previous normal condition.

¶ 37 Plaintiff testified that his injuries included injuries to his left leg and mental health conditions, including anxiety, depression, and PTSD. He stated that he experiences flashbacks that cause him discomfort and make him feel shaky. Before the incident, he had experienced anxiety since age 13 and depression beginning in high school, for which he was prescribed Wellbutrin and Effexor. He also described experiencing family turmoil before the incident, particularly when his mother attempted to take her own life in his presence. His oldest sister had previously attempted suicide, and another sister attempted suicide after the incident. He worried about his family. Before

the incident, he had not been diagnosed with PTSD. He had received mental health services from therapists and counselors, primarily to address family-related trauma. At the time of trial, he had no medical restrictions.

¶ 38 A stipulation regarding plaintiff's medical bills was entered into the record. The parties agreed that $421,213.56 was a reasonable and customary value for the treatment plaintiff received.

¶ 39 8. Dr. Thomas Revak

¶ 40 The videotaped deposition of Dr. Thomas Revak was played for the jury. He is an orthopedic trauma surgeon. He testified that plaintiff sustained multiple injuries to his left leg, specifically a fracture of the tibial plateau, which is the upper part of the tibia, as well as a fracture of the tibial shaft lower down on his shinbone. Additionally, the fibula was broken in multiple locations. The injuries included multiple compound fractures of both the tibia and fibula. Plaintiff also suffered injuries to the knee and ankle. He had open fractures, indicating that the bone protruded through the soft tissue, resulting in an open wound exposed to the external environment. Dr. Revak performed the second, third, and fourth surgical procedures on plaintiff's leg. Between the surgeries, there would have been significant pain and limitations in functionality.

¶ 41 The initial procedure was conducted by a different physician on July 5, 2023, involving the application of an external fixation device. An erector set was secured to the bone with pins, helping align the fractures and maintain stability. This device facilitated wound cleaning and irrigation. The recovery period was approximately 10 to 14 days, allowing soft tissues to heal and swelling to diminish, and plaintiff likely experienced considerable pain during this period.

¶ 42 Dr. Revak performed the next surgical procedure on July 19, 2023, intending to address all issues at that time. However, upon commencing the operation, he realized that the underlying injury was considerably more complex than initially anticipated. After completing a portion of the

procedure, he elected to return on a subsequent day to address the tibia. Plaintiff has numerous hardware components in his left leg, spanning from the knee to the ankle.

¶ 43 For several months, plaintiff was unable to bear weight and would have experienced considerable pain according to Dr. Revak. Plaintiff reported ankle pain, prompting further imaging. The results indicated some "eccentricity at the syndesmosis" and incomplete healing of the fibula, necessitating further surgical intervention. Plaintiff remained non-weightbearing for a period of four to six weeks thereafter.

¶ 44 Given his injuries, Dr. Revak anticipated that plaintiff will have certain functional limitations, which were expected to persist permanently. He also anticipated that plaintiff would experience chronic knee pain for the remainder of his life. He testified that patients were typically advised that full recovery to preinjury normalcy was unlikely following such injuries and procedures. Dr. Revak expected plaintiff to experience ongoing functional limitations and pain related to his injuries, similar to his current condition, and this was expected to continue throughout his life. A long-term complication he identified was early-onset knee arthritis. Although Dr. Revak did not believe plaintiff would require additional surgery, a knee replacement may be necessary at some point.

¶ 45 Plaintiff informed Dr. Revak that his ankle pain has significantly improved following the most recent surgery and that he experienced only a "vague knee pain." Ten days prior to the most recent surgery, he allowed plaintiff to resume full work duties despite ankle pain, as it did not impair plaintiff's ability to perform his employment responsibilities. Following the last surgery, plaintiff was absent from work for four to six weeks. He had no current intentions to place plaintiff on indefinite work restrictions. As of the date of his deposition, no restrictions had been imposed

on plaintiff, and he had no upcoming medical appointments. He testified that plaintiff may not require knee replacement surgery.

¶ 46 9. Dr. Eric Wittrock

¶ 47 Dr. Eric Wittrock was plaintiff's treating psychiatrist. Plaintiff commenced treatment with him following the incident on July 15, 2024, and remained under his care. He believed, to a reasonable degree of medical certainty, that plaintiff sustained PTSD as a consequence of the collision. He advised plaintiff to maintain ongoing treatment with him. Plaintiff continued to exhibit symptoms associated with PTSD.

¶ 48 During cross-examination, Dr. Wittrock testified that prior to his initial visit with plaintiff, he was unaware of any other trauma in plaintiff's life. At the time of the initial visit, plaintiff was already under medication for depression and anxiety. He was informed that plaintiff's family had a history of bipolar disorder and previous suicide attempts. One criterion for diagnosing PTSD was that the individual must have experienced, witnessed, or learned about a traumatic event involving actual or threatened death or serious injury. A suicide attempt by a close family member may be classified as a traumatic event. He acknowledged that it was theoretically possible that plaintiff's PTSD may have existed prior to the accident. He did not impose any medical or mental health restrictions on plaintiff prior to his attendance at college.

¶ 49 10. Sarah Klucker

¶ 50 Sarah Klucker, plaintiff's mother, testified that since the incident, plaintiff had been unable to engage in certain activities he previously enjoyed. He was unable to enter the duck blind for hunting or navigate the rough terrain to place decoys. Additionally, he could not kneel on the ground to play with his niece. She acknowledged that prior to the incident, plaintiff received treatment from several mental health therapists. Three years before the incident, she attempted to

commit suicide within the family residence, with plaintiff present. Subsequently, the family participated in six or seven sessions of family therapy. Additionally, two of her daughters attempted suicide. She acknowledged that plaintiff worried about her and that these preceding events have had a traumatic impact on him.

¶ 51 11. Dr. Michael Stachniak

¶ 52 Dr. Michael Stachniak, a psychiatrist with dual certification in general adult psychiatry and child and adolescent psychiatry, was called as an expert witness retained by defendant. He conducted an independent medical and mental health examination of plaintiff and reviewed a substantial number of his medical records. He indicated that he was hired by defendant to examine plaintiff, whom he met virtually for two hours. His fee for an evaluation was $5,795, with additional charges of $2,500 for medical review and telephone consultations and $3,000 for the deposition. He also billed at least $3,795 for his trial testimony. Since the inception of this case, his earnings have totaled approximately $15,000. He maintained his own practice and allocated about 20% of his time to this work; however, it accounted for about 50% of his total income. Over the past three years, he conducted more than 140 of these types of medical evaluations, earning roughly $350,000 annually from these services. Since 2022, his earnings from litigation consulting approached $1 million.

¶ 53 Dr. Stachniak testified that at the time of the incident, plaintiff was taking Wellbutrin at a lower-than-usual dose and Effexor at the maximum dose. Prior to the incident, plaintiff met the diagnostic criteria for both generalized anxiety disorder and depression. He also concluded that plaintiff met the criteria for PTSD, which he believed preexisted the incident due to prior exposure to "quite a number of traumatic incidents." Some of the attempted suicides by his family profoundly impacted him mentally and emotionally. He testified that plaintiff met the clinical

criteria for enuresis, a condition characterized by bedwetting that began in childhood and persisted into young adulthood.

¶ 54 Dr. Stachniak testified that plaintiff's prescribed dose of Wellbutrin was increased following the incident. Although the dose escalation was consistent with the prescribed levels, the timing of the increase subsequent to the incident served as an objective criterion indicating that the symptoms were worse. Plaintiff was performing well for his age of 21, and there was no evidence to suggest that his condition impeded his ability to work or maintain a typical lifestyle. He participated in an internship and engaged in social activities.

¶ 55 During cross-examination, Dr. Stachniak indicated that the accident contributed to and increased plaintiff's PTSD, though it was not the sole cause. The most significant contributing factors were his mother's and sister's suicide attempts. Plaintiff was more vulnerable than the average person to sustaining mental health and psychological damage due to these past issues. Plaintiff had never been diagnosed with or treated for PTSD prior to the incident. He had previously been prescribed numerous psychiatric medications and therapies, which would have been indicated for PTSD. Dr. Stachniak was the first to acknowledge that the PTSD was preexisting. He stated that plaintiff confided in him that, over the past year, his pain has been "essentially absent in terms of not treating" and that he occasionally used Tylenol.

¶ 56 On redirect examination, Dr. Stachniak testified that plaintiff was "functioning well currently occupationally, socially, interpersonally. His medications have hardly changed at all, just a slight increase in that very low dose of Wellbutrin following the accident. Biopsychosocially he's doing pretty all right." He lacked objective evidence that plaintiff's daily life was unbearable in any manner.

¶ 57 Outside the presence of the jury, defense counsel made an offer of proof as to Dr. Stachniak's excluded testimony concerning plaintiff's marijuana use. Dr. Stachniak testified that plaintiff's recent history of marijuana use involved daily or near-daily consumption, and he met the objective criteria for cannabis use disorder. This was considered relevant because substance use disorder was highly prevalent among individuals with PTSD. Dr. Stachniak opined that plaintiff's consistent and daily use was indicative of self-medicating behavior, which was highly pertinent to his PTSD history. He further stated that the extent of marijuana use served as additional evidence of PTSD predating the accident and suggested self-medication for PTSD. Additionally, he noted that prior to the accident, plaintiff was prescribed medication but remained "very symptomatic." His medication doses increased significantly in early 2023 leading up to the incident, which he believed was insufficient given the severity of his symptoms. As his medication dosage escalated, so did his marijuana use, reaching a frequency of "every day, very heavy use." He believed plaintiff's symptoms were not adequately controlled in the weeks and months before the incident. Plaintiff's marijuana use was clinically significant and could have substantial implications for his future academic and occupational pursuits. He explained that PTSD was an anxiety disorder and that anxiety was a symptom that could arise from a PTSD diagnosis.

¶ 58 12. Motion for Directed Verdict

¶ 59 Defendant filed a motion for a directed verdict on the count alleging willful and wanton conduct. After considering the arguments presented by counsel, the trial court stated that, upon examining all the testimony and demonstrative exhibits and viewing them in the light most favorable to the nonmoving party, and upon applying the *Pedrick* test,[2] there "are issues of

[2]"Trial courts apply what is known as the *Pedrick* standard when deciding a motion for directed verdict or a motion for judgment *n.o.v.* Under that standard, a directed verdict or judgment *n.o.v.* is properly granted only where 'all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.' "

credibility of witnesses and conflicting evidence which should be left for the jury's determination." It also found that "the nonmoving party has established at least a *prima facie* evidence for every element of their claim." It denied the motion.

¶ 60 13. Closing Arguments

¶ 61 After a jury instruction conference, closing arguments were presented. Plaintiff's counsel argued that defendant "gunned it through the intersection after lunging past his stop sign four times" and cut off traffic in the left-turn lane, ultimately striking plaintiff, who had the right of way. He stated that Dr. Stachniak, "the guy who got paid $100 a minute for his testimony" and had earned $1 million over the preceding three years by speaking with lawyers, testified that plaintiff suffered from PTSD as a result of the incident. Plaintiff's counsel further argued that he had lost the ability to move his body freely without experiencing constant pain. Regarding monetary compensation, he made statements such as that a suitcase containing $5 million "would be a hell no" and that plaintiff would not accept it even if it contained three times that amount.

¶ 62 In closing, defendant's counsel asked the jury to set sympathy aside. He argued that defendant "creeped forward" at the stop sign and waited for several minutes. After looking through the gaps between the cars in the left lane, he saw no vehicles moving and believed he had been waved through the intersection. He maintained that the collision was an accident, not the result of negligence. Defendant's counsel further argued that, although plaintiff's leg injury was painful and gruesome, plaintiff made a full recovery and was not subject to any medical restrictions. He asserted that, if the jury found fault and awarded damages, it should award $100,000 for

Hamilton v. Hastings, 2014 IL App (4th) 131021, ¶ 22 (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)).

disfigurement, $100,000 for loss of normal life, $100,000 for emotional distress, and $100,000 for pain and suffering, for a total of $821,213.56.[3]

¶ 63 In rebuttal, plaintiff's counsel argued that it felt like there was no justice in the world and that "[b]ullies and the powerful win while claiming to be the victims themselves." It was stated, "We know that, and we have an obligation to everyone else not to do something reckless for our own convenience. This was like a version of Russian roulette with traffic. It's like spinning around blindfolded in a room, pointing a loaded gun, firing it knowing there's people all around that you might hit." Regarding damages, he argued that the jury was not required to accept any figure presented. However, if the total compensatory damages were even one penny or dollar below $10 million, defendant would consider it a victory. "If it's $1 million less than that, I think they're going to be popping champagne bottles tonight. Don't give them that celebration."

¶ 64 14. Jury's Verdict

¶ 65 The jury returned a verdict for plaintiff in the total sum of $27,496,213.56, itemized as follows: disfigurement—$10 million, loss of normal life—$10 million, pain and suffering—$5 million, emotional distress—$2 million, medical expenses—$421,213.56, and punitive damages—$75,000.

¶ 66 C. Posttrial

¶ 67 On November 12, 2025, plaintiff filed a motion seeking judgment to recover costs, prejudgment interest, and postjudgment interest. On December 5, 2025, defendant filed a combined motion for judgment notwithstanding the verdict or a new trial. Additionally, defendant filed a motion for remittitur, requesting a reduction of the judgment to a total amount of $2,171,213.56, itemized as follows: $100,000 for disfigurement, $750,000 for loss of normal life,

[3]This figure included the stipulated medical bills totaling $421,213.56.

$750,000 for pain and suffering, $150,000 for emotional distress, $421,213.56 for medical expenses, and $0 for punitive damages.

¶ 68 A hearing was conducted on January 8, 2026. Counsel presented arguments, and the trial court subsequently took the matters under advisement. On February 20, 2026, the trial court issued a written order denying defendant's motion for judgment notwithstanding the verdict, motion for a new trial, and motion for remittitur. Additionally, the trial court granted plaintiff's request for costs amounting to $10,192.03, along with prejudgment and postjudgment interest. Defendant timely filed a notice of appeal.

¶ 69 II. ANALYSIS

¶ 70 Defendant asserts on appeal that the trial court erred in granting plaintiff leave to plead a willful and wanton count seeking punitive damages and denying his motion for directed verdict as to the punitive damages claim. He maintains that the trial court erred in denying him a new trial, asserting cumulative errors prejudiced the proceedings, citing issues related to punitive damages, the exclusion of evidence concerning plaintiff's self-medication with marijuana use, and plaintiff's counsel's closing arguments. Furthermore, he argues that he was entitled to a new trial because the jury's verdict was contrary to the manifest weight of the evidence. Lastly, he contends that the trial court erred in failing to grant a remittitur.

¶ 71 A. Punitive Damages

¶ 72 Defendant argues that this was a simple accident case, not a punitive damages case, asserting the trial court erred in (1) allowing plaintiff to amend his complaint to add punitive damages, (2) denying defendant's motion for a directed verdict on the issue of punitive damages, (3) denying his motion for a new trial on the issue of punitive damages, and (4) not remitting punitive damages to $0. We address each in turn.

¶ 73 1. Amending of Complaint

¶ 74 Defendant contends that the trial court committed error by permitting plaintiff to amend his complaint when it acknowledged that "there's obviously some factual disputes here." Defendant argues that this acknowledgment does not constitute the appropriate test, which instead requires an assessment of whether the facts presented are legally sufficient to support an award of punitive damages, referencing section 2-604.1 of the Code of Civil Procedure (735 ILCS 5/2-604.1 (West 1994)). Furthermore, defendant asserts that even if the trial court did apply the correct standard, plaintiff failed to meet it, as the conduct in question was a negligent mistake rather than a deliberate or conscious disregard for a known danger.

¶ 75 In response plaintiff contends that the trial court's acknowledgment of the existence of factual disputes does not imply that the trial court applied an incorrect legal standard. Furthermore, he asserts that defendant's conduct in crossing the road constituted a "blatant, conscious disregard of a traffic signal" and exemplified conduct that warrants a claim for punitive damages.

¶ 76 First, we address our standard of review, noting that the parties are in disagreement: defendant asserts that our review is *de novo*, while plaintiff contends it is an abuse of discretion, citing our case of *Kaytor v. Southern Illinois Hospital Services*, 2025 IL App (5th) 240416, ¶ 135. It is important to highlight that plaintiff referenced an incorrect paragraph in *Kaytor*, as the case explicitly states in preceding paragraphs that the standard of review for the initial step of a punitive damages analysis—specifically, whether the remedy of punitive damages is even "available"—is subject to *de novo* review. *Id.* ¶¶ 133-34. This conclusion aligns with the precedent set forth in *Stojkovich v. Monadnock Building*, 281 Ill. App. 3d 733 (1996), where the appellate court examined whether the trial court committed error in denying the plaintiff's motion to amend his complaint to include a claim for punitive damages. In that case, the appellate court clarified that

the standard of review depends on whether the trial court held an evidentiary hearing in deciding whether to grant leave to amend the complaint. *Id.* at 743. When the trial court conducts an evidentiary hearing and considers witness credibility, the standard of review is abuse of discretion. *Id.* Conversely, if the court relies solely on documentary submissions without considering credibility, then "the only question before a court is the legal conclusion to be drawn from a given set of facts," and credibility is not at issue, making the review *de novo*. *Id.* Here, because the trial court resolved the section 2-604.1 motion on the parties' written submissions and the arguments of counsel—without an evidentiary hearing at which witnesses testified or their credibility was weighed—our review is *de novo*. The trial court's passing observation that "there's obviously some factual disputes here" does not import a deferential standard. Where the section 2-604.1 determination rests on documentary submissions alone, "credibility is not a factor and, on review, we have before us all that was before the trial court." *Id.*

¶ 77 In his motion for leave to amend the complaint to include a claim for punitive damages, plaintiff included testimony from defendant's discovery deposition, wherein he admitted to having a stop sign, acknowledged that he did not have the right of way, although the cross-traffic did, and that he hit plaintiff. The motion also included testimony from witnesses in other vehicles, notably Garcia, who testified that defendant lunged into the intersection four times and, following the fourth lunge, "gunned it" through. Plaintiff relied upon Illinois Pattern Jury Instructions, Civil, No. 35.01 (rev. Jan. 2007), which provides that if defendant's conduct was willful and wanton and proximately caused damages to plaintiff, punitive damages could be awarded. During oral arguments regarding the motion, defendant asserted that he did not blindly enter the intersection. Instead, he stated that he was stopped, observed both directions, and could see between the vehicles in the left-turn lane, noting the absence of any vehicles in the through lane. Furthermore, defendant

claimed that plaintiff "was on the shoulder and just flew by." Defendant further argued that his actions did not constitute willful and wanton conduct or gross negligence. After considering counsel's arguments, the trial court remarked, "there's obviously some factual disputes here. There's no doubt that's why it may go to the jury," and granted the motion for leave to claim punitive damages.

¶ 78 Section 2-604.1 states that the court shall allow a plaintiff to amend the complaint to add punitive damages if he establishes "a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages." 735 ILCS 5/2-604.1 (West 1994). In determining whether plaintiff met his burden of establishing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages, we refer to *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 186 (1978), which states:

> "It has long been established in this State that punitive or exemplary damages may be awarded when torts are committed with fraud, actual malice, deliberate violence or oppression, or when the defendant acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others [citation]. Where punitive damages may be assessed, they are allowed in the nature of punishment and as a warning and example to deter the defendant and others from committing like offenses in the future."

¶ 79 In *Yelinich v. Capalongo*, 38 Ill. App. 2d 199, 201 (1962), the plaintiff sued the defendant for damages arising from a vehicular collision, alleging both negligence and willful and wanton conduct. The plaintiffs were legally proceeding through a green light when the defendant struck them while driving through the intersection on a red light. *Id.* at 201-02. At trial, the defendant gave conflicting testimony about the exact moment he became aware of the plaintiffs' presence. *Id.* at 202. The appellate court held that a claim for willful and wanton conduct was appropriate as

> "[t]he jury could have found here, from the conflicting testimony of defendant, the testimony of plaintiffs and the physical location of the cars at the time of the impact, that defendant, either knowingly or with conscious indifference, drove his car through a red light in a built up business area and crashed broadside into plaintiffs' car. At the very least, the testimony at trial raised a genuine issue of fact as to wilful and wanton misconduct which was properly submitted by the trial court to the jury." *Id.* at 207.

It stated that "[a]n intentional disregard of a known duty necessary to the safety of the person or property of another, and an entire absence of care for the life, person or property of others, such as exhibits a conscious indifference to consequences, makes a case of wanton conduct." *Id.* at 206.

¶ 80 Similarly, in *Hering v. Hilton*, 12 Ill. 2d 559 (1958), the Illinois Supreme Court addressed a willful and wanton claim alleged against the defendant who was stopped at a stop sign, and then, misjudging the plaintiff's distance, proceeded through the intersection colliding with the plaintiff. *Id.* at 561. The court stated:

> "One often quoted definition is that set forth in *Schneiderman v. Interstate Transit Lines, Inc.*, 394 Ill. 569, at p. 583[, 69 N.E.2d 293, at page 300]: 'A wilful or wanton injury must have been intentional or the act must have been committed under circumstances exhibiting a reckless disregard for the safety of others, such as a failure, after knowledge of impending danger, to exercise ordinary care to prevent it or a failure to discover the danger through recklessness or carelessness when it could have been discovered by the exercise of ordinary care.' " *Id.* at 562.

It further stated,

> "[v]iewing defendant's conduct accordingly, it appears that although he did stop the truck at the stop sign and looked both ways with an unobstructed view, he nevertheless proceeded

ahead onto the intersection, after noting plaintiff's car approaching from the west, and without looking again in that direction until the moment of the impact." *Id.* at 563.

It further noted that labeling the defendant's conduct as an error of judgment does not free it from the taint of willful and wanton conduct. *Id.* at 564.

¶ 81 When evaluated in accordance with these cases, the evidentiary material presented to the trial court at the time it granted plaintiff's section 2-604.1 motion sufficiently demonstrated conduct on the part of defendant that rose to the level of wrongdoing necessary to justify an award of punitive damages. Defendant did not have the right of way and crossed lanes of traffic that did. Vehicles were lined up in the turn lane, which also had the right of way, and one witness in one of those vehicles testified in her discovery deposition that defendant lunged forward and then gunned through the lanes of traffic. Another witness stated that they had the right of way to turn left and that defendant cut them off by proceeding straight through the intersection. This was not a situation where defendant misjudged the distance of approaching vehicles and reasonably believed he had time to safely enter the intersection. Rather, the vehicles turning left with the right of way were directly in front of him, and he chose to travel ahead into approaching traffic. The evidence in support of the motion established a "reasonable likelihood" that plaintiff could prove facts at trial that defendant acted with wanton disregard for the rights and safety of others. Consequently, we find that the trial court did not err in granting leave to plaintiff to amend his complaint to include a willful and wanton count for punitive damages.

¶ 82 Defendant asserts that the trial court failed to apply the appropriate standard, referencing the language employed when granting the motion. More specifically, the trial court stated that "there's obviously some factual disputes here." However, the trial court did not specify that it was the sole standard being applied, nor did it elaborate when granting the motion. "The trial court is

presumed to know the law *** and to apply it properly, absent a strong affirmative showing to the contrary in the record." *People v. Groebe,* 2019 IL App (1st) 180503, ¶ 62. We will not infer that the trial court was unaware of the law solely based on its statement that there were factual disputes, absent further evidence from the record strongly indicating to the contrary which is not present here.

¶ 83 2. Directed Verdict

¶ 84 Defendant asserts that the trial court erred in denying his motion for a directed verdict concerning punitive damages at the conclusion of plaintiff's case. He states that, by the close of plaintiff's evidence, he had testified that he did not believe a vehicle could be in the through lane because traffic was backed up into that lane from the left-turn lane. He indicated that he could see through the vehicles in the left-turn lane and, seeing nothing approaching, proceeded through the intersection. Defendant contends that plaintiff inquired about an "alternative universe" where he did see the cross-traffic, which would constitute a conscious disregard for safety. He maintains that this hypothetical is irrelevant to the actual circumstances. Defendant asserts that this was a straightforward negligence case, not one warranting punitive damages, and accordingly, the trial court erred in denying his motion for a directed verdict.

¶ 85 In response, plaintiff cited all the evidence presented during his case in chief, contending that defendant was aware of his duty to all traffic, including plaintiff, and that he lunged forward despite being unable to see whether anyone was approaching from the through lane. "This can only be described *** as a conscious disregard and reckless indifference to the rights and safety of others, specifically [plaintiff]."

¶ 86 "The court applies the *de novo* standard of review to the denial of a motion for a directed verdict." *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 31 (2009). " 'A directed verdict is

appropriate where the plaintiff has failed to establish a *prima facie* case.' " (Internal quotation marks omitted.) *Id.* (quoting *Jones v. DHR Cambridge Homes, Inc.*, 381 Ill. App. 3d 18, 28 (2008)). " ' "A directed verdict is granted improperly where 'there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome.' " ' " *Id.* (quoting *Jones*, 381 Ill. App. 3d at 28, quoting *Kim v. Mercedes-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 460 (2004), quoting *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992)).

¶ 87 After a careful review of the record, we conclude that there was ample evidence to support the trial court's denial of defendant's motion for directed verdict.

> "[I]n determining whether the wilful and wanton count should have been submitted to the jury, we must measure defendant's conduct by that standard. However, in so doing we cannot consider the conflicts in the evidence, nor its weight or preponderance, nor the credibility of witnesses, but must take that evidence as true which is most favorable to plaintiff's cause of action." *Hering*, 12 Ill. 2d at 562-63.

"If such evidence and its intendments most favorable to plaintiff tend to establish wilful and wanton misconduct by defendant, then defendant's motion for a directed verdict was properly denied." *Id.* at 563.

¶ 88 Viewing defendant's actions in this manner, although it is undisputed that defendant came to a complete stop at the stop sign for a few minutes, he made a conscious decision to enter the intersection with vehicles with the right of way turning directly in front of him. The fact that defendant contended that he never saw plaintiff is not particularly significant. According to the

unbiased eyewitnesses, the driver of the closest turning vehicle in front of plaintiff was compelled to brake abruptly because defendant was "gunning it." As our supreme court stated:

> "In evaluating defendant's conduct we are cognizant of the obligation of the driver of a vehicle approaching a preferred highway, which has been set forth in *Ritter* *** *v. Nieman*, 329 Ill. App. 163[, 171 (1946)]: 'What is the purpose of a stop sign? Certainly, it does not signify that a motorist should stop, and then blindly proceed through a protected intersection without determining that he can do so with reasonable safety. The operator of a motor vehicle, when he stops at a preferred highway, should ascertain if he can proceed safely across such highway. If he cannot, he should not enter it. Merely stopping some place near a stop sign does not necessarily discharge one's duty.' " *Id.*

¶ 89 Defendant argues that his belief that there was no cross-traffic approaching was a mistake, but his labeling his actions as such "does not free it from the taint of wilful and wanton misconduct." *Id.* at 564. Defendant knew he did not have the right of way; nevertheless, he proceeded regardless, initially cutting off a vehicle executing a left turn. He then continued forward, colliding with plaintiff. "Inasmuch as such conduct plainly involved an unreasonable risk with a high probability of danger, of which defendant should have had knowledge, the wilful and wanton count [was] properly submitted to the jury." *Id.* at 565. As such, the denial of the motion for directed verdict was proper.

¶ 90 3. Judgment Notwithstanding the Verdict

¶ 91 Defendant next contends that the trial court erred in denying his motion for judgment notwithstanding the verdict. Both parties primarily rely on the same evidence and arguments they presented regarding the denial of the motion for a directed verdict previously discussed. "A motion for judgment *n.o.v.* should be granted only when all the evidence, viewed in the light most

favorable to the nonmovant, so overwhelmingly favors the moving party that no other verdict based on the evidence could stand." *Dayton v. Pledge*, 2019 IL App (3d) 170698, ¶¶ 31, 33 (reinstating jury's willful-and-wanton verdict arising from an intersection collision and reaffirming that whether conduct is willful and wanton is a question of fact for the jury). "The *Pedrick* standard is a 'very difficult standard to meet, limiting the power of the [trial] court to reverse a jury verdict to extreme situations only.' " *Id.* ¶ 31 (quoting *People ex rel. Department of Transportation v. Smith*, 258 Ill. App. 3d 710, 714 (1994)). "The court has no right to enter a judgment *n.o.v.* if there is any evidence, together with reasonable inferences, demonstrating a factual dispute or where the credibility of the witnesses or an assessment of the conflicting evidence is decisive to the outcome of the trial." *Id.* "We review *de novo* a trial court's decision to grant or deny a motion for judgment *n.o.v.*" *Id.*

¶ 92 We find that the evidence thoroughly discussed above, when viewed in a light most favorable to plaintiff, was sufficient to establish a genuine issue of material fact regarding whether defendant's conduct was willful and wanton. The jury determined that defendant's operation of the vehicle through the intersection evidenced willful and wanton misconduct, and there are no grounds to disturb the trial court's denial of the motion for a judgment notwithstanding the verdict.

¶ 93 B. Request for a New Trial

¶ 94 Defendant next asserts that the trial court erred in denying his motion for a new trial. He contends that he is entitled to a new trial because of the cumulative prejudicial errors committed by the trial court, as well as the jury's awards of punitive and compensatory damages, which were contrary to the manifest weight of the evidence. "This court applies an abuse of discretion standard of review in considering a trial court's ruling on a motion for a new trial." *Unitrin Preferred Insurance Co. v. Dobra*, 2013 IL App (1st) 121364, ¶ 17. "An abuse of discretion is found only

where no reasonable person would take the view adopted by the trial court." *Dunning v. Dynegy Midwest Generation, Inc.*, 2015 IL App (5th) 140168, ¶ 78.

¶ 95 1. Cumulative Errors

¶ 96 " 'A new trial is necessary when the cumulative effect of trial errors so deprives a party of a fair trial that the verdict might have been affected.' " *Ramirez v. FCL Builders, Inc.*, 2014 IL App (1st) 123663, ¶ 225 (quoting *Netto v. Goldenberg*, 266 Ill. App. 3d 174, 184 (1994)). Defendant raises three issues to support his claim of cumulative error: (1) the improper admission of a punitive damages claim, (2) the exclusion of evidence regarding plaintiff's marijuana use, and (3) the failure to cure plaintiff's "wholly-inappropriate closing arguments."

¶ 97 a. Punitive Damages

¶ 98 Defendant asserts that permitting plaintiff to plead a claim for punitive damages enabled plaintiff's counsel to argue things such as defendant was "playing Russian roulette with people's lives" during closing arguments. Defendant contends that the " 'intent' accusations poisoned the well" and that the jury's verdict of over $27 million was influenced by plaintiff's improper emphasis on intent. Plaintiff counters that defendant did not cite in its brief any evidence introduced at trial specifically attributable to the punitive damages claim, and that references were limited to closing statements. Plaintiff further states, "if the punitive damages claim had no effect on what the jury actually heard during trial, it is difficult to see how it tainted anything." Additionally, plaintiff notes that the jury awarded only $75,000 in punitive damages, compared with over $27 million in compensatory damages. If the punitive damages claim had been more inflammatory, the award might have been higher.

¶ 99 We previously determined that the trial court properly submitted the punitive damages claim to the jury. We do not find the punitive damages award excessive. Defendant's arguments here are conclusory and speculative, and we find no merit to them.

¶ 100 b. Plaintiff's Marijuana Use

¶ 101 Defendant contends that the trial court erred in its ruling on excluding evidence regarding plaintiff's use of marijuana. A trial court's ruling on a motion *in limine* is reviewed under an abuse-of-discretion standard. *Noble v. Earle M. Jorgensen Co.*, 2013 IL App (5th) 120248, ¶ 21. "An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. Woodson*, 2023 IL App (1st) 191353, ¶ 102.

¶ 102 Following a pretrial hearing, the trial court granted plaintiff's request to prohibit defendant from introducing any evidence or arguments related to plaintiff's use of marijuana on the day of the incident. However, defendant was granted permission to submit additional briefing concerning the testimony of Dr. Stachniak's diagnosis of cannabis use disorder. Subsequently, defendant filed a memorandum supporting his request to admit evidence regarding marijuana use, asserting that Dr. Stachniak would testify that plaintiff used marijuana for self-medication to treat his disorder and that plaintiff's "chronic marijuana use before and after the incident is directly relevant to the existence and severity of the plaintiff's mental health disorders." At a later pretrial hearing on this matter, plaintiff stipulated to withdraw any claim related to anxiety disorder resulting from the incident, thereby eliminating the need to introduce evidence of marijuana use. Defendant contended that plaintiff had placed his mental health at issue, including his claim for damages associated with PTSD. The trial court stated:

"The question is whether—there probably is some probative value. The question is whether it's substantially outweighed by the unfair prejudice.

I'm concerned it will be prejudicial and probably to an extent unfairly. I'm not sure how we would thread the needle. At this point—I will take it up later in trial if it comes up or if a door opens that you think that has to be opened. I don't want to close the door completely.

I think based upon—some of it is going to be based upon testimony, and some is going to be cross-examination and plaintiff's testimony, but I'd say initially we'll say that any use of marijuana will be barred at this time, but we can take it up on a side bar and we can definitely take it up if the door opens to where it could become a relevant factor."

Then, during the trial, defendant presented an offer of proof as to Dr. Stachniak's testimony concerning plaintiff's near-daily marijuana use to address his PTSD symptoms. Dr. Stachniak testified that plaintiff's marijuana use was "very relevant to his history of PTSD."

¶ 103 " 'When a trial court excludes evidence, no appealable issue remains unless a formal offer of proof is made.' " *Maggi v. RAS Development, Inc.*, 2011 IL App (1st) 091955, ¶ 59 (quoting *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002)).

" '[A]n offer of proof serves dual purposes: (1) it discloses to the court and opposing counsel the nature of the offered evidence, thus enabling the court to take appropriate action, and (2) it provides the reviewing court with an adequate record to determine whether the trial court's action was erroneous.' " *Cundiff v. Patel*, 2012 IL App (4th) 120031, ¶ 20 (quoting *People v. Pelo*, 404 Ill. App. 3d 839, 875 (2010)).

¶ 104 "Evidence is relevant if it has any tendency to make a fact in consequence to the determination of the action more or less probable than it would be without the evidence." *People*

v. Wheeler, 334 Ill. App. 3d 273, 283 (2002). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ill. R. Evid. 403 (eff. Jan. 1, 2011). Here, any probative value of plaintiff's use of marijuana for self-medicating purposes was substantially outweighed by the danger of unfair prejudice.

¶ 105 Defendant offered the marijuana evidence not to show impairment at the time of the collision, but to establish that plaintiff's PTSD and related conditions predated the incident and were more severe than plaintiff acknowledged—evidence bearing on causation and the damages claim for emotional distress. A defendant is entitled to introduce competent evidence that a preexisting condition or other cause accounts for the plaintiff's claimed injury, and Rule 403 calls for a fact-intensive balancing rather than a bright-line rule of exclusion. *Arient v. Alhaj-Hussein*, 2017 IL App (1st) 162369, ¶ 39. The trial court's ruling respected those principles. The incremental probative value of the marijuana evidence was slight: the jury already heard extensive evidence of plaintiff's preexisting anxiety, depression, prior trauma, and psychiatric medications, and defendant's own expert conceded that the PTSD predated the collision and that plaintiff's family members' suicide attempts—not the accident—were the most significant contributing factors. A party seeking to attribute a plaintiff's condition to a preexisting cause must also lay a competent foundation connecting the two. *Noble*, 2013 IL App (5th) 120248, ¶¶ 27-28. Against that limited probative value, the danger of unfair prejudice inherent in evidence of habitual drug use was substantial, and the trial court reasonably found it substantially outweighed. Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 106 Further, jurors may hold strong views about illicit or controversial substances and may punish a party for perceived moral shortcomings unrelated to the elements of the claim or defenses. The inflammatory nature of drug-related evidence invites emotion-based decision-making and propensity inferences that the balancing rule is designed to prevent. This court has upheld the exclusion of precisely this kind of evidence. In *Bruntjen v. Bethalto Pizza, LLC*, 2014 IL App (5th) 120245, ¶ 143, we held that a trial court did not abuse its discretion in barring evidence of a personal-injury plaintiff's marijuana and alcohol use where no physician testified that the use had in fact affected the plaintiff's recovery—only that it "might" or "could"—because the prejudice of injecting drug use into the trial outweighed its limited probative value. (Emphases omitted.) So too here. As such, the trial court did not abuse its discretion in finding that the limited probative value of plaintiff's marijuana use was substantially outweighed by the dangers of unfair prejudice.

¶ 107 c. Plaintiff's Closing Arguments

¶ 108 Defendant asserts that plaintiff engaged in "highly improper and prejudicial closing arguments," which, both individually and collectively with other alleged errors, justify a new trial. He highlights that plaintiff's counsel stated defendant engaged in "a version of Russian roulette," described as "like spinning around blindfolded in a room, pointing a loaded gun, firing it knowing there's people all around that you might hit." Defendant contends that comparing defendant to a shooter constitutes "the precise appeal to emotion, fear, and moral outrage—as opposed to actual evidence—that Illinois law prohibits." Additionally, he argues that plaintiff breached the fundamental principle that "financial position is not an appropriate line of argument" when asserting that awarding a dollar less than $10 million would be considered a victory for defendant, and that if the award is $1 million less, defendant would be celebrating with champagne. In response, plaintiff maintains that these issues were not preserved for appeal. Furthermore, if they

were, plaintiff argues they were "fair commentary on the evidence" that did not cause prejudice to defendant.

¶ 109 First, we do not find that defendant forfeited this argument on appeal, as appropriate objections were made, thereby preserving the issues for appellate review. "A party's '[f]ailure to object to improper closing argument results in forfeiture of the objection on appeal.' " *Dynek v. City of Chicago*, 2020 IL App (1st) 190209, ¶ 57 (quoting *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, ¶ 121). Defendant's counsel timely objected to the "Russian roulette" remark; but, because we conclude the remark was proper, the adequacy of its preservation is academic.

¶ 110 In reference to counsel's remarks concerning popping champagne, these comments were made at the end of plaintiff's counsel's arguments in rebuttal. At that juncture, defendant's counsel requested to approach the bench to "make a record on something." After the jury retired to deliberate, the trial court asked counsel whether they wished to record anything. Defendant's counsel indicated an intention "to confirm for the record" plaintiff's last statement made in the closing arguments. The parties argued over plaintiff's assertion that popping champagne after a verdict of less than $10 million implied the existence of $10 million in insurance coverage. Plaintiff's counsel did not argue to the trial court that defendant had failed to make a contemporaneous objection. After ruling on the motion for mistrial, the trial court stated: "[t]hank you for preserving your objection." As such, we find defendant properly preserved his objections, and his arguments are not forfeited on appeal.

¶ 111 Defendant objected when plaintiff made the following remark during closing arguments:

> "We know that, and we have an obligation to everyone else not to do something reckless for our own convenience. This was like a version of Russian roulette with traffic.

It's like spinning around blindfolded in a room, pointing a loaded gun, firing knowing there's people all around that you might hit."

"During closing argument, attorneys have wide latitude to comment and argue based on the evidence presented at trial as well as draw any reasonable inferences from that evidence." *Ittersagen v. Advocate Health & Hospitals Corp.*, 2020 IL App (1st) 190778, ¶ 83. "However, when arguing to the jury, attorneys should not unfairly appeal to its emotions." *Id.* "The jury must decide the case based on the evidence and issues presented at trial 'unencumbered by appeals to [its] passion, prejudice or sympathy.' " *Id.* (quoting *Lorenz v. Siano*, 248 Ill. App. 3d 946, 953 (1993)). "Improper comments during closing argument, however, require reversal only where the comments resulted in substantial prejudice to the challenging party." *Ramirez v. City of Chicago*, 318 Ill. App. 3d 18, 26 (2000).

¶ 112 We do not find counsel's Russian roulette argument resulted in substantial prejudice to plaintiff. " '[C]ounsel may not misrepresent the evidence, argue facts not in evidence, nor "create his own evidence" ' during closing argument." *Tsoukas v. Lapid*, 315 Ill. App. 3d 372, 383 (2000) (quoting *Lecroy v. Miller*, 272 Ill. App. 3d 925, 933 (1995), quoting *Poole v. City of Rolling Meadows*, 253 Ill. App. 3d 154, 161 (1993)). However, rhetoric during closing arguments is permissible. See *People v. Loferski*, 235 Ill. App. 3d 675, 689 (1992). Counsel enjoy "wide latitude during closing argument and may comment and argue on the evidence and any inference that may be fairly drawn from that evidence." *Zickuhr v. Ericsson, Inc.*, 2011 IL App (1st) 103430, ¶ 72. Characterizing defendant's decision to lunge forward and "gun it" blindly through the intersection as "a version of Russian roulette with traffic" was a permissible rhetorical characterization of the trial evidence, not an appeal to passion. Vivid language drawn from the record does not, standing alone, render an argument improper. "In reviewing closing arguments, we must consider the whole

argument as opposed to focusing on selected remarks or phrases." *People v. Hensley*, 2014 IL App (1st) 120802, ¶ 64. Plaintiff is entitled to use reasonable inferences and rhetorical characterizations drawn from the evidence, and the vivid language does not, standing alone, render the argument improper.

> "Counsel may arraign the conduct of the parties, and impugn, excuse, justify, or condemn motives, so far as they are developed in evidence ***. He may argue such conclusions from the testimony as he pleases, provided he does not misquote witnesses. . . . It has been said: Just and fierce invective, when based upon the facts in evidence and all legitimate inferences therefrom, is not discountenanced by the courts." (Internal quotation marks omitted.) *Forslund v. Chicago Transit Authority*, 9 Ill. App. 2d 290, 306 (1956).

Accordingly, plaintiff's characterization of crossing traffic as being "like a version of Russian roulette with traffic" was a fair comment on the evidence and did not constitute improper argument.

¶ 113 Defendant further argues that counsel improperly argued that:

> "[I]f this number for total compensatory damages is one penny or one dollar less than $10 million, I think they're going to consider that a victory.
>
> If it's $1 million less than that, I think they're going to be popping champagne bottles tonight. Don't give them a celebration."

Defendant maintains that this argument referred to defendant's access to insurance and thus violated the fundamental principle that "financial position is not an appropriate line of argument." Defendant likens these statements to those made in *Zickuhr*, 2011 IL App (1st) 103430, ¶ 71, where the plaintiff told the jury during closing arguments that it was requesting $7 to $14 million and that " 'It's a total win for this corporation if you don't come back with a substantial verdict. It's an absolute win.' "

¶ 114 We find that the "champagne bottles" remark was improper as it was not based on the evidence. Rather, it suggested defendant would benefit from or celebrate a favorable verdict, as in *Zickuhr*. In that case, the trial court sustained the defendant's objection and admonished the jury that " 'What is a win or a loss I think is irrelevant.' " *Id.* ¶ 76. The appellate court held that the trial court's timely response effectively cured any prejudicial effect the remark may have generated. *Id.* ¶ 75. The court's analysis assumed, without definitively deciding, that the remark may have been improper, and resolved the issue on the ground that any resulting prejudice was cured by the trial court's admonishment. *Id.* ¶ 76.

¶ 115 Although we find this argument was improper, improper closing arguments do not automatically require reversal. Illinois courts apply a substantial prejudice standard to closing arguments: improper closing arguments require reversal only when the comments resulted in substantial prejudice to the opposing party. *Id.* ¶ 75. Substantial prejudice occurs when, but for the improper comments during closing argument, the outcome of the trial would have been different. *Ittersagen*, 2020 IL App (1st) 190778, ¶ 87. Reversal is warranted where "the verdict resulted from the passion or prejudice of the jury rather than from an objective consideration of the evidence" or "when the evidence is close, such that a jury might reasonably return a verdict for either party." *Konewko v. Advocate Health & Hospitals Corp.*, 2020 IL App (2d) 190684, ¶ 84.

¶ 116 We do not find that the "champagne bottles" argument was so substantially prejudicial that the trial outcome would have been different in its absence. The remark was directed to the amount of damages, not to liability, and the evidence establishing defendant's liability—and the willful and wanton character of his conduct—was not closely balanced. Based on the evidence presented, the jury did not merely find negligence; it found that defendant acted willfully and wantonly and returned a separate award of punitive damages—a finding we have already held was amply

supported and properly submitted. A passing comment about how defendant might react to a particular dollar figure could neither have supplied nor undermined proof of this character. On this record, the remark did not deprive defendant of a fair trial.

¶ 117 2. Jury Award

¶ 118 Defendant asserts that the trial court abused its discretion by not granting a new trial, arguing that the awards of punitive and compensatory damages are contrary to the manifest weight of the evidence. Plaintiff contends that defendant cannot request a new trial on damages, as defendant did not challenge the verdict and therefore failed to show that the verdict is contrary to the manifest weight of the evidence. "[T]he decision of whether to grant a new trial is a matter reserved to the sound discretion of the trial court, and the court's determination will not be overturned on review absent an abuse of discretion." *Stanford v. City of Flora*, 2018 IL App (5th) 160115, ¶ 26. "[A] jury's verdict may be set aside and a new trial ordered where the amount of damages awarded is against the manifest weight of the evidence or where the jury has clearly disregarded a proven element of damages." *Id.* Thus, defendant can argue that the trial court abused its discretion in failing to grant a new trial based on his objection to the damages award. The determination of damages is reserved to the trier of fact, and we will disturb an award only where it "falls outside the range of fair and reasonable compensation, results from passion or prejudice, or shocks the judicial conscience." *Doe v. Parrillo*, 2021 IL 126577, ¶ 73.

¶ 119 We will also concurrently address defendant's argument that the trial court abused its discretion in denying his request for a remittitur, as that is dispositive with respect to some aspects of the damages award. Rule 366(a)(5) grants reviewing courts broad authority to enter any judgment and make any order that ought to have been given or made, including the entry of a remittitur. Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994). This provision is the procedural foundation

for appellate courts ordering remittitur in the first instance, even when the trial court declined to do so. We note that the substantive distinction that drives a split outcome—affirming denial of new trial while reversing denial of remittitur—rests on a well-established principle: a verdict that exceeds proven damages must be corrected by remittitur, but a new trial is required only when the verdict is so excessive as to indicate that the jury acted from passion or prejudice. *Peter J. Hartmann Co. v. Capitol Bank & Trust Co.*, 353 Ill. App. 3d 700, 711 (2004). Where the verdict is excessive but the excess does not reflect passion or prejudice, remittitur—not a new trial—is the appropriate remedy. *Id.*

¶ 120 "A remittitur is plaintiff's agreement to remit to defendant that portion of the damages that is excessive, and to accept the sum the court has determined is properly recoverable." *Svec v. City of Chicago,* 2024 IL App (1st) 230893, ¶ 91. "The trial court has no authority to reduce the damages by entry of a remittitur if plaintiff objects." *Id.* "Therefore, the trial court must afford plaintiff the opportunity to agree to, or refuse, the entry of a remittitur." *Id.* "If plaintiff refuses the entry of a remittitur, the court will order a new trial on damages." *Id.* "We review the trial court's ruling on a motion for a remittitur for abuse of discretion." *Id.* We will concurrently consider remittitur and the denial of a new trial, if applicable, for each element of damages.

¶ 121 a. Punitive Damages

¶ 122 The award for punitive damages was $75,000.

> "Under the relevant test to determine whether an award of punitive damages is excessive, three factors are considered: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases."

(Internal quotation marks omitted.) *Leyshon v. Diehl Controls North America, Inc.*, 407 Ill. App. 3d 1, 18 (2010).

Given the harm incurred and the extent of the supplementary compensatory damages awarded, $75,000 was relatively modest. Consequently, we do not determine that this award was contrary to the manifest weight of the evidence or that the trial court abused its discretion in denying the request for a remittitur or new trial.

¶ 123 b. Compensatory Damages

¶ 124 Defendant contends that the award of compensatory damages, totaling $27 million, was excessive. " 'The determination of damages is a question reserved to the trier of fact, and a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court.' " *Doe*, 2021 IL 126577, ¶ 73 (quoting *Richardson v. Chapman*, 175 Ill. 2d 98, 113 (1997)). "A reviewing court will do so only when the damage award falls outside the range of fair and reasonable compensation, results from passion or prejudice, or shocks the judicial conscience." *Id.* Defendant argues that the compensatory award damages was "grossly excessive" and bore "no relationship to the evidence that the jury received at trial." We will discuss each type of award separately, as is addressed in defendant's brief.

¶ 125 1. Disfigurement Damages

¶ 126 The jury awarded plaintiff $10 million in disfigurement damages. Disfigurement is defined in case law "as 'that which impairs or injures the beauty, symmetry or appearance of a person or thing; that which renders unsightly, mis-shapen or imperfect or deforms in some manner.' " *Corn Products Co. v. Industrial Comm'n*, 51 Ill. 2d 338, 341 (1972) (quoting *Superior Mining Co. v. Industrial Comm'n*, 309 Ill. 339, 340 (1923)). Under Illinois Pattern Jury Instructions, Civil, No. 30.01 (approved Dec. 8, 2011), the jury is instructed to fix the amount of money that will

reasonably and fairly compensate the plaintiff for the disfigurement resulting from the injury, taking into consideration the nature, extent, and duration of the injury. David J. Roe, Illinois Civil Jury Instructions Companion Handbook § 7:12 (Aug. 2026 Update). A threshold requirement for a disfigurement instruction is that the plaintiff demonstrate a "visible physical change." *Rapp v. Kennedy*, 101 Ill. App. 2d 82, 85 (1968). Whether the disfigurement is actually noticeable and whether it impairs the plaintiff's beauty, symmetry, or appearance are key considerations. *Superior Mining Co.*, 309 Ill. at 340.

¶ 127 Plaintiff's leg injuries resulted in four surgeries, with the first three occurring within the first month. His leg sustained multiple breaks, and his tendons and ligaments were torn. Plaintiff testified that he bears scars that are sensitive; some are entirely numb, while others cause a tingling sensation when pushed too hard. He continues to wear a brace daily beneath his pants. His leg is misaligned and angled. He cannot straighten it as much as his right leg. During trial, the jury observed plaintiff's gait in the courtroom, including when he took the witness stand.

¶ 128 Dr. Revak testified that plaintiff sustained multiple injuries to his left leg, specifically a fracture of the tibial plateau, which is the upper part of the tibia, as well as a fracture of the tibial shaft lower down on his shinbone. Additionally, the fibula was broken in multiple locations. The injuries included multiple compound fractures of both the tibia and fibula. Plaintiff also suffered injuries to the knee and ankle. He had open fractures, indicating that the bone protruded through the soft tissue, resulting in an open wound exposed to the external environment. Plaintiff has numerous hardware components in his left leg, spanning from the knee to the ankle.

¶ 129 With that said, lay or expert testimony describing the scar's appearance, size, location, and permanence is relevant. In *Delgado v. Rockford Memorial Hospital*, 2025 IL App (4th) 240804-U, ¶ 36, the record included photographs of the scar, testimony about its size and jagged

appearance, and expert testimony that surgery could improve but not eliminate it. In contrast, here, no testimony addressed the appearance, number, and length of the scars on plaintiff's leg. While there was testimony regarding the permanency of the scars, testimony regarding the appearance, size, and location were notably lacking.

¶ 130 The jury's firsthand observation of the plaintiff's injury is itself evidence. In *Stift v. Lizzadro*, 362 Ill. App. 3d 1019, 1031 (2005), the court noted that the jury's determination was based on its own observation of the scar, which was not described or documented by any photograph in the record. The court deferred to that observation, noting it was in no position to second-guess the jury's determination. *Id.* Here, the jury did not observe the condition of plaintiff's leg because he wore pants during his testimony and did not display it to the jury.

¶ 131 Photographs depicting the appearance of plaintiff's leg around the time of trial were not introduced as evidence (see *People v. Johnson*, 2021 IL App (1st) 173107-U, ¶ 38 (where photographs, testimony, and the jury's observation of the victim's scar at trial demonstrated permanent disfigurement to support defendant's conviction of aggravated battery premised on permanent disfigurement)). While the jury viewed photographs depicting the leg's severe disfigurement immediately after the incident and following surgical intervention, it was not informed of the leg's current appearance.

¶ 132 Although the jury heard substantial evidence of plaintiff's leg injuries, the $10 million disfigurement award falls outside the range of fair and reasonable compensation this record supports. The proof of disfigurement, while genuine, was limited: the jury saw photographs of the leg immediately after the injury and the surgeries, but no witness described the present appearance, size, number, or location of plaintiff's scars; plaintiff did not display the leg to the jury; and no photograph of the leg as it appeared at trial was admitted. Because a remittitur must reduce an

award to the highest amount the evidence of record will support, we reduce the disfigurement award to $5 million, the outer limit this evidence will bear. See *Slovinski v. Elliott*, 237 Ill. 2d 51, 65 (2010).

¶ 133 2. Loss of Normal Life

¶ 134 The jury awarded plaintiff $10 million for loss of normal life. "[L]oss of a normal life has been recognized as a separate element of compensable damages in Illinois." *Snelson v. Kamm*, 204 Ill. 2d 1, 32 (2003). Loss of normal life is defined as "plaintiff's '[d]iminished ability to enjoy life that the plaintiff has experienced' [citation], which should include plaintiff's temporary or permanent inability to pursue the pleasurable aspects of life, such as recreation or hobbies." *Smith v. City of Evanston*, 260 Ill. App. 3d 925, 938 (1994).

¶ 135 Preexisting conditions do not bar recovery for loss of normal life, but they are relevant to the scope of damages. The general instruction requires jurors to take into account the nature, extent, and duration of the injuries resulting from the accident, and if the accident aggravated a preexisting condition, the defendant is liable for damages caused by the aggravation, but not for losses that would have resulted from the preexisting condition even if the accident had not occurred. *Id.* at 938-39.

¶ 136 The $10 million loss-of-normal-life award likewise exceeds the amount the evidence supports. Plaintiff established real limitations—his month-long hospitalization, his inability to hunt or to kneel to play with his young relatives, and the difficulties that led him to withdraw from the University of Alabama—and a preexisting condition does not defeat such an award where the injury independently altered plaintiff's freedom, mobility, and daily routine. But the evidence also showed that plaintiff is under no medical restrictions, drives, socializes, is employed, and is again enrolled in school and enjoying his studies. Reducing the award to the highest figure the evidence

will support, we remit it to $5 million. *Slovinski*, 237 Ill. 2d at 65. As with other noneconomic damages, that figure need not be fixed by precise arithmetic; it is enough that the reduction rests on the specific evidence of the injury's nature and severity. See *Richardson*, 175 Ill. 2d at 115 (where damages were remitted to "a more appropriate figure" that rested on the evidence of the injury's severity).

¶ 137 3. Pain and Suffering

¶ 138 The jury awarded the sum of $5 million for pain and suffering. "An award for pain and suffering is proper where there is evidence of physical injury." *Carter v. Azaran*, 332 Ill. App. 3d 948, 959 (2002). The nature, extent, and duration of the injury are foundational considerations in any pain and suffering analysis. The Illinois Supreme Court in *Powers v. Illinois Central Gulf R.R. Co.*, 91 Ill. 2d 375 (1982), clarified that these factors are not a separate, independently compensable element of damages but rather serve as the lens through which the jury evaluates other elements such as disability and pain and suffering. *Id.* at 382-84.

¶ 139 The evidence demonstrated that plaintiff endured and suffered extensive pain in the months following the accident. He underwent four surgical procedures, including the insertion of pins into his leg, and remained hospitalized for approximately one month, predominantly confined to bed and unable to move. After his discharge and commencement of therapy, plaintiff testified that the process was highly painful with minimal benefit. The residual scars caused sensations ranging from numbness to tingling. He continues to apply ice when swelling occurs and experiences pain while walking and climbing stairs. The plaintiff expressed doubt that his leg would ever return to normal.

¶ 140 Dr. Revak provided testimony indicating that, during the initial months following the surgeries, plaintiff was unable to bear weight and suffered significant pain. Dr. Revak further stated

that plaintiff is anticipated to endure chronic knee pain for the rest of his life. Additionally, he identified early-onset knee arthritis as a long-term complication, which may necessitate knee replacement surgery. Therefore, we conclude that the jury appropriately considered plaintiff's pain and suffering when determining that element of damages and that its award was not contrary to the manifest weight of the evidence. Furthermore, the trial court did not abuse its discretion in denying a new trial or by not ordering a remittitur.

¶ 141 4. Emotional Distress

¶ 142 The jury awarded a sum of $2 million in damages to plaintiff for emotional distress. Although plaintiff experienced emotional distress prior to the accident, it was aggravated by the circumstances of this case. He has continued to require medication to manage his mental health. Plaintiff sought counseling both before and after the incident and has suffered from flashbacks and trembling since the event. His treating psychiatrist testified that plaintiff developed PTSD as a result of the incident. The psychological impact of this incident and the subsequent recovery process affected his capacity to maintain his enrollment at the University of Alabama on two separate occasions. He testified that during his initial attempt, he recognized the extent of his pain, which led to an emotional breakdown and feelings of inadequacy. The evidence suggested that plaintiff will experience a long-term emotional impact as a result of this incident. As such, the jury's award for emotional distress was not against the manifest weight of the evidence and the trial court did not abuse its discretion in denying a new trial or by not ordering a remittitur.

¶ 143 C. Remittitur

¶ 144 "Supreme Court Rule 366(a) enumerates the powers of the reviewing courts, which they may exercise in their discretion, including the powers to '*** enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any

relief, including a remandment, a partial reversal, the order of a partial new trial, the entry of a remittitur, or the enforcement of a judgment, that the case may require.' " *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 560 (2005) (quoting Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994)). "The practice of ordering a remittitur of excessive damages has long been recognized and accepted as part of Illinois law." *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 412 (1997). " '[A]n award of damages will be deemed excessive if it falls outside the range of fair and reasonable compensation or results from passion or prejudice, or if it is so large that it shocks the judicial conscience.' " *Id.* (quoting *Richardson*, 175 Ill. 2d at 113).

¶ 145 Upon consideration of the record and as explained hereinbefore, we conclude that the damages awarded for disfigurement and for loss of normal life exceed the amounts supported by the evidence. Accordingly, we grant a remittitur as to those categories and reduce the award for disfigurement to $5 million and the award for loss of normal life to $5 million. We do not reach these conclusions by comparing plaintiff's award to those in other cases; courts of this state "have traditionally declined to make such comparisons in determining whether a particular award is excessive." *Richardson*, 175 Ill. 2d at 114. The affirmed awards rest on Dr. Revak's testimony of permanent injury, chronic pain, and likely future arthritis, and on the treating psychiatrist's opinion that plaintiff developed PTSD as a result of the collision; the reduced awards outran the comparatively limited evidence of plaintiff's present disfigurement and his substantial return to his ordinary activities.

¶ 146 III. CONCLUSION

¶ 147 In summary, we affirm the trial court's judgment on the verdict in favor of plaintiff as to the award of punitive damages and compensatory damages for pain and suffering and emotional distress. We reduce the damages awarded for disfigurement and loss of normal life to $5 million

each. The trial court is directed to issue an order granting plaintiff 30 days from the date of the entry to the trial court's order, to decide whether to accept the remitted awards. If plaintiff accepts the remitted awards within that timeframe, the trial court shall enter judgment accordingly; if not, the trial court shall order a new trial on the issue of damages for disfigurement and/or loss of normal life.

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

***Klucker v. Zobrist,* 2026 IL App (5th) 260250**

Decision Under Review:	Appeal from the Circuit Court of Madison County, No. 24-LA-686; the Hon. Patrick G. King, Judge, presiding.
Attorneys for Appellant:	Brian J. Talcott, of Dinsmore & Shohl, LLP, of Chicago, and Kathryn W. Bayer, of Dinsmore & Shohl, LLP, of Cincinnati, Ohio, for appellant.
Attorneys for Appellee:	John G. Simon, Timothy M. Cronin, Mary Simon, and Nathan S. Perlmutter, of Simon Law Firm. P.C., of St. Louis, Missouri, for appellee.