2026 IL App (1st) 252198
No. 1-25-2198
Opinion filed November 13, 2026

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FIFTH DIVISION

JERYIS FLORES, Individually and as Independent Administrator of the Estate of Cianie Flores, Deceased, and CARLOS FLORES, Plaintiffs-Appellees,

v.

ADVOCATE HEALTH AND HOSPITALS CORPORATION, d/b/a Advocate Medical Group; ADVOCATE NORTH SIDE HEALTH NETWORK, d/b/a Advocate Illinois Masonic Medical Center; JOSEPHINE JIMENEZ; and SILVIA BICALHO, M.D., Defendants-Appellants.

Appeal from the Circuit Court of Cook County.
Honorable Nichole C. Patton, Judge, Presiding.
No. 2020 L 010272

JUSTICE WILSON delivered the judgment of the court, with opinion.
Presiding Justice Oden Johnson and Justice C.A. Walker concurred in the judgment and opinion.

**OPINION**

¶ 1 Jeryis Flores went to Advocate Illinois Masonic Medical Center in labor with her daughter, Cianie Flores. Obstetrician Dr. Silvia Bicalho and nurse Josephine Jimenez allegedly failed to take appropriate steps to monitor Cianie and timely intervene during labor, resulting in Cianie's death. Jeryis Flores, on behalf of Cianie's estate, and Carlos Flores (plaintiffs) brought this action, and after a three-week trial, a jury returned a verdict in their favor, awarding $7.5 million in wrongful-death damages.

¶ 2 At trial, plaintiffs alleged three acts or omissions against Dr. Bicalho and three against nurse Jimenez. During deliberations, the jury asked, "Do we need to be unanimous on one count or can we be unanimous on any combination?" The court responded that, as to each defendant, the jurors had to unanimously agree that the defendant was negligent but did not have to agree "as to which one of the three possible acts constitute the negligence." Defendants then tendered six special interrogatories directed to whether the jurors unanimously agreed on particular alleged acts or omissions and their causal relationship to plaintiffs' injuries. The trial court declined to submit them. The jury thereafter returned its verdict for plaintiffs.

¶ 3 Dr. Bicalho, nurse Jimenez, Advocate Health and Hospitals Corporation, doing business as Advocate Medical Group, and Advocate North Side Health Network, doing business as Advocate Illinois Masonic Medical Center (collectively, defendants or Advocate entities), raise two issues on appeal. First, they argue that the trial court's response to the jury's question deprived them of their constitutional right to a unanimous jury verdict because it permitted jurors to impose liability without unanimously agreeing that any particular alleged act or omission constituted negligence and proximately caused plaintiffs' injuries. Second, defendants argue that the trial court abused its discretion by refusing their proposed special interrogatories.

¶ 4 We affirm. A unanimous verdict required each juror to find that the defendant under consideration was negligent and that the defendant's negligence proximately caused plaintiffs' injuries. The jurors were not additionally required to agree on which of the alternative alleged acts or omissions established those findings. Read together with the written instructions, the trial court's response to the jury's question accurately conveyed that requirement. We further conclude that the trial court did not abuse its discretion in refusing defendants' proposed special interrogatories.

¶ 5 I. BACKGROUND

¶ 6 Plaintiffs brought this action with Jeryis proceeding individually and as independent administrator of Cianie's estate. The complaint named Drs. Kirthika Vijayakumar, Emily Walton, and Silvia Bicalho, nurse Josephine Jimenez, and two Advocate entities. Plaintiffs later voluntarily dismissed Drs. Vijayakumar and Walton. The case proceeded to trial on claims that Dr. Bicalho and Jimenez negligently managed Jeryis's labor and that the Advocate entities were liable for their conduct.

¶ 7 At approximately 5 a.m. on September 26, 2018, Jeryis arrived at Advocate Illinois Masonic Medical Center in labor with Cianie. Nurse Jimenez began caring for her at approximately 7 a.m. By then, Jeryis was nine centimeters dilated.

¶ 8 Throughout Jeryis's labor, her medical providers used electronic fetal monitoring to record Cianie's heart rate and Jeryis's contractions. An external monitor placed against Jeryis's abdomen transmitted the readings to an electronic display and a paper record commonly referred to as a fetal-monitoring "strip." When the external monitor did not adequately capture the fetal heart rate, providers could use a fetal scalp electrode, which attaches to the fetus's scalp and continuously records the fetal heart rate. When nurse Jimenez began caring for Jeryis, both Jeryis's and Cianie's vital signs were within normal ranges.

¶ 9 The testimony established that fetal-heart-rate tracings are classified as category I, II, or III. Each category corresponds to the fetus's acid-base status and, by extension, its current well-being. Category I generally reflects normal fetal acid-base status and does not require intervention. Category III is abnormal and may indicate significant fetal compromise requiring prompt intervention. Category II encompasses tracings that do not meet the criteria for either category I or III and warrants continued evaluation. Cianie's tracings remained category I or II through most of

labor and did not become category III until shortly before delivery. At trial, the parties disputed what the category II tracings indicated about Cianie's condition and whether they warranted earlier intervention.

¶ 10 At approximately 8:30 a.m., Dr. Bicalho examined Jeryis and determined that she was completely dilated and that Cianie remained relatively high in the birth canal. Dr. Bicalho therefore instructed Jeryis to "labor down," meaning to allow contractions and gravity to assist Cianie's descent before actively pushing. Active pushing began at approximately 10:30 a.m.

¶ 11 As labor continued, the fetal-heart-rate tracing showed decelerations (temporary decreases in the fetal heart rate) and periods during which the external monitor did not continuously record Cianie's heart rate. Dr. Bicalho testified that she became concerned about the changing pattern at approximately 12:40 p.m. By 12:48 p.m., the external monitor was having increasing difficulty recording Cianie's heart rate, and nurse Jimenez testified that she could not identify Ciane's heart rate on the tracing from approximately 12:48 p.m. to 12:50 p.m. At approximately 12:50 p.m., Dr. Bicalho placed a fetal scalp electrode, which recorded a markedly low fetal heart rate. The tracing was then category III. Dr. Bicalho ordered an emergency cesarean section at approximately 12:51 p.m. Cianie was delivered at approximately 1:04 p.m. and did not survive.

¶ 12 After delivery, Cianie's placenta and umbilical cord were examined. The pathology report stated that the placenta weighed below the tenth percentile and that the cord measured 1.3 centimeters in diameter. An autopsy identified "placental insufficiency" (inadequate blood flow or oxygen through the placenta) as the cause of death. At trial, however, the parties disputed what caused the oxygen deprivation that preceded Cianie's death. Plaintiffs' causation experts interpreted the decelerations during the second stage of labor as evidence that the umbilical cord was repeatedly compressed during contractions, progressively reducing Cianie's oxygen supply

and ultimately causing her death. Defendants' experts instead attributed her death to the small placenta and thin umbilical cord, together with a sudden, unpreventable blockage of the cord shortly before delivery.

¶ 13 A. Trial

¶ 14 Plaintiffs filed their complaint on September 25, 2020, and the case proceeded to a jury trial in January 2025 in front of Judge Nichole C. Patton. The trial evidence centered on whether Dr. Bicalho and nurse Jimenez should have intervened earlier and whether any delay caused Cianie's death.

¶ 15 Plaintiffs' obstetrical expert, Dr. Fred Duboe, opined that Dr. Bicalho deviated from the standard of care in three respects: (1) by instructing Jeryis to labor down after 8:30 a.m., (2) failing to place a fetal scalp electrode by 11:15 a.m., and (3) failing to order an emergency cesarean section between approximately 12:15 p.m. and 12:20 p.m. He testified that discontinuities in the external tracing warranted use of a fetal scalp electrode earlier to more reliably distinguish Cianie's heart rate from Jeryis's and that the labor-down instruction improperly prolonged the second stage of labor.

¶ 16 Plaintiffs' nursing expert, Lindsay McDevitt, R.N., testified that nurse Jimenez deviated from the standard of care in three respects: (1) by failing to question Dr. Bicalho's instruction to labor down, (2) by failing to advocate for earlier placement of a fetal scalp electrode, and (3) by failing to use the nursing chain of command if Dr. Bicalho did not respond to those concerns.

¶ 17 Plaintiffs also presented expert testimony on causation. Dr. Mark Landon, a maternal-fetal-medicine specialist, interpreted the tracing as showing repeated umbilical-cord compression and a progressive loss of fetal oxygen during the second stage of labor. He opined that Cianie would have survived if delivered by 12:25 p.m. and that the failure to place a fetal scalp electrode before

approximately 12:50 p.m. contributed to her death. When asked whether the departures identified by Dr. Duboe and McDevitt were proximate causes of Cianie's death, Dr. Landon answered affirmatively. Plaintiffs' neonatology and placental-pathology experts likewise attributed Cianie's death to oxygen deprivation associated with repeated cord compression during labor.

¶ 18 Defendants' standard-of-care experts disagreed. Their obstetrical expert testified that Dr. Bicalho appropriately instructed Jeryis to labor down, that the fetal-heart-rate tracing did not warrant placement of a fetal scalp electrode before 12:50 p.m., and that the standard of care did not require an emergency cesarean section before 12:51 p.m. Their nursing expert likewise opined that nurse Jimenez appropriately followed the labor-down instruction, was not required to advocate for earlier placement of a fetal scalp electrode, and had no reason to invoke the nursing chain of command because she and Dr. Bicalho did not disagree about the plan of care.

¶ 19 Defendants also offered a different explanation for Cianie's death. Their pathologist, Dr. Ricardo Lastra, attributed the death to fetal vascular malperfusion (reduced blood flow from the fetus to the placenta) associated with the small placenta and thin umbilical cord. He testified that the condition could not have been diagnosed before delivery. Their neonatology expert, Dr. Jeffrey Loughead, opined that a complete and unpreventable blockage of the umbilical cord occurred shortly before delivery, around the time Cianie's heart rate sharply declined. On cross-examination, Dr. Loughead also agreed that Cianie likely would have survived had she been delivered approximately 13 to 15 minutes earlier.

¶ 20 B. Jury Instructions and Deliberations

¶ 21 The issues instruction submitted three alleged acts or omissions against each individual defendant. As to Dr. Bicalho, plaintiffs alleged that she was negligent in one or more of the following respects: (1) failing to call for an emergency cesarean section between 12:15 p.m. and

12:20 p.m., (2) failing to place a fetal scalp electrode between 11:12 a.m. and 11:15 a.m., and (3) instructing Jeryis to labor down after 8:30 a.m. As to nurse Jimenez, plaintiffs alleged that she was negligent in one or more of the following respects: (1) failing to question Dr. Bicalho's instruction to labor down after 8:30 a.m., (2) failing to advocate for placement of a fetal scalp electrode between 11:15 a.m. and 12:30 p.m., and (3) failing to use the nursing chain of command if Dr. Bicalho disagreed with her concerns. The instruction further stated that plaintiffs claimed "one or more of the foregoing was a proximate cause" of their injuries.

¶ 22 The court separately instructed the jury that plaintiffs bore the burden of proving, "as to each defendant," that the defendant "acted or failed to act in one of the ways claimed by the Plaintiffs as stated to you in these instructions," that the defendant was negligent in doing so, and that the negligence was a proximate cause of plaintiffs' injuries. The jury was directed to consider those propositions separately as to each defendant. The court further instructed, "Your verdict must be unanimous."

¶ 23 During deliberations, the jury submitted the following question: "Do we need to be unanimous on one count or can we be unanimous on any combination?" Plaintiffs responded, "Any combination. That's the law." Defendants countered that "proximate cause is a different analysis for each one" and asked, "[I]f they're not unanimous about the way in which there was negligence, how can they be unanimous about proximate cause?" Defendants proposed telling the jurors that their verdict "must be unanimous as to 'a' count or 'an' issue presented to them in the case."

¶ 24 The parties also discussed *Galich v. Advocate Health & Hospital Corp.*, 2024 IL App (1st) 230134, which involved a similar jury question. After reviewing *Galich*, the trial court stated, "I'll follow this case," and responded:

"Response No. 1: You must make a unanimous decision that Silvia Bicalho, M.D., was negligent. You do not need to be unanimous as to which one of the three possible acts constitute the negligence.

Response No. 2: You must make a unanimous decision that Josephine Jimenez, R.N., was negligent. You do not need to be unanimous as to which one of the three possible acts constitute the negligence."

¶ 25 C. Special Interrogatories and Verdict

¶ 26 After the court determined how it would answer the jury's question, defendants tendered six special interrogatories. One asked, "Do you unanimously agree the same act or omission of negligence was the proximate cause of Plaintiffs' injuries?" Three others separately asked whether the jury unanimously agreed that Dr. Bicalho (1) failed to call for an emergency cesarean section between 12:15 p.m. and 12:20 p.m., (2) failed to place a fetal scalp electrode between 11:12 a.m. and 11:15 a.m., or (3) violated the standard of care by instructing Jeryis to labor down after 8:30 a.m., and whether the specified conduct proximately caused plaintiffs' injury. The remaining two asked whether the jury unanimously agreed that nurse Jimenez's failure to advocate for a fetal scalp electrode between 11:15 a.m. and 12:30 p.m. or her failure to use the nursing chain of command proximately caused the injury.

¶ 27 The trial court refused the interrogatories. It explained that giving them would contradict the response it had just provided under *Galich* and could lead the jurors to believe that they had to agree on a particular alleged act. The court stated: "I don't want them to have special interrogatories now leading them to believe that they need to consider these three factors *** when I already told them that they do not have to."

¶ 28 The jury returned a general verdict for plaintiffs and against all remaining defendants, awarding plaintiffs $7.5 million in damages. The court asked whether the verdict was unanimous, and the jurors collectively responded that it was. At defendants' request, the court then polled the jury individually, and each juror confirmed the verdict. The trial court entered judgment on the verdict for $7.5 million, plus costs and $1,613,835.61 in prejudgment interest, for a total judgment of $9,113,835.61, plus costs.

¶ 29 D. Posttrial Proceedings

¶ 30 Defendants moved for a new trial or other relief. As relevant here, they asserted that the court's answer to the jury's question deprived them of a unanimous verdict because different jurors could have relied on different alleged acts or omissions in finding liability. They also asserted that the court erred by refusing the proposed special interrogatories, which they maintained would have revealed whether the jurors agreed on a particular negligent act that proximately caused the injury.

¶ 31 The trial court denied defendants' posttrial motion. On the unanimity issue, the court found *Galich* "factually similar and fully applicable" and concluded that its response to the jury's question properly required unanimity as to each defendant's negligence without requiring agreement on which alleged act constituted that negligence. The court also concluded that defendants' proposed special interrogatories were not in proper form because they did not satisfy the requirements governing special interrogatories, including that an interrogatory, standing alone, be dispositive of an ultimate issue and independently control the verdict. Defendants timely filed their notice of appeal on October 28, 2025.

¶ 32 II. ANALYSIS

¶ 33 A. Jury Unanimity

¶ 34 Defendants contend that the trial court deprived them of their constitutionally guaranteed right to a unanimous jury verdict by instructing the jurors that they must unanimously find Dr. Bicalho and nurse Jimenez negligent but need not agree on which of the three alleged acts constituted the negligence. In their view, unanimity required all 12 jurors to agree on at least one common act or omission that constituted negligence and proximately caused plaintiffs' injury. Defendants ask that we reverse the judgment and remand for a new trial. We disagree for the reasons that follow.

¶ 35 1. *Standard of Review*

¶ 36 When a jury requests clarification on a point of law, the trial court generally must respond even if the original instructions were proper. *Van Winkle v. Owens-Corning Fiberglas Corp.*, 291 Ill. App. 3d 165, 172 (1997). We review the court's decision whether to respond for an abuse of discretion, but where, as here, the issue is whether the response accurately stated the law, our review is *de novo*. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 16. An inaccurate response warrants a new trial only if it seriously prejudiced the complaining party's right to a fair trial. *Bailey v. Mercy Hospital & Medical Center*, 2021 IL 126748, ¶ 42 (citing *Heastie v. Roberts*, 226 Ill. 2d 515, 543 (2007)).

¶ 37 2. *Governing Principles*

¶ 38 The right to a civil jury trial in Illinois is guaranteed by article I, section 13, of the Illinois Constitution, which provides that "[t]he right of trial by jury as heretofore enjoyed shall remain inviolate." Ill. Const. 1970, art. I, § 13. Our supreme court has interpreted this provision to preserve the jury trial right as it existed at common law when the constitution was adopted, including a jury

of 12 impartial jurors whose verdict is unanimous. *Kakos v. Butler*, 2016 IL 120377, ¶¶ 13-17, 28; *Sinopoli v. Chicago Rys. Co.*, 316 Ill. 609, 619-20 (1925); *Liska v. Chicago Rys. Co.*, 318 Ill. 570, 583 (1925).

¶ 39 In *Chicago & Northwestern Ry. Co. v. Dunleavy*, 129 Ill. 132, 144 (1889), our supreme court explained that:

> "[t]he common law requires that verdicts shall be the declaration of the unanimous judgment of the twelve jurors. Upon all matters which they are required to find they must be agreed. But it has never been held that they must all reach their conclusions in the same way and by the same method of reasoning."

¶ 40 The court further explained that requiring unanimity "not only in the result but also in each of the successive steps leading to such result, would be practically destructive of the entire system of jury trials." *Id.*

¶ 41 The Code of Civil Procedure (Code) (735 ILCS 5/1-101 *et seq.* (West 2024)) governs the form of a civil verdict. Section 2-1108 of the Code makes a general verdict the ordinary form of verdict in a civil case. See *id.* § 2-1108 ("[u]nless the nature of the case requires otherwise, the jury shall render a general verdict"). A general verdict resolves a claim without identifying the particular ground on which the jury relied.

¶ 42 Section 2-1108 also provides for special interrogatories directing the jury to "find specially upon any material question or questions of fact." *Id.* A special interrogatory serves to test the general verdict against the jury's finding on an ultimate issue of fact. *Simmons v. Garces*, 198 Ill. 2d 541, 555 (2002). To perform that function, the interrogatory must concern an ultimate issue upon which the parties' rights depend and be capable of an answer inconsistent with a general verdict that might be returned. *Id.* at 563.

¶ 43 Section 2-1201(d) (735 ILCS 5/2-1201(d) (West 2024)), in turn, governs review of a verdict when several grounds of recovery support the same claim. It codifies the general-verdict rule, which provides that, when "several grounds of recovery are pleaded in support of the same claim," a general verdict ordinarily will not be set aside or reversed because one ground is defective if another is sufficient to sustain it. *Id.*; *Wright-Young v. Chicago State University*, 2019 IL App (1st) 181073, ¶ 107. The rule permits a reviewing court to sustain a general verdict even though it does not disclose which of the submitted grounds the jury accepted. *Great American Insurance Co. of New York v. Heneghan Wrecking & Excavating Co.*, 2015 IL App (1st) 133376, ¶ 15; *Witherell v. Weimer*, 118 Ill. 2d 321, 329 (1987).

¶ 44 Taken together, these principles establish that unanimity is required on the findings necessary to liability, while a general verdict may rest on alternative grounds without identifying which ground the jury accepted. The task, then, is to determine how those principles apply in the medical-negligence context—specifically, whether the jury must unanimously agree on the particular negligent act or omission underlying the required findings of deviation from the standard of care and proximate cause, or whether it is enough that all jurors agree those two findings have been proved, even if they base that agreement on different alleged negligent acts or omissions.[1]

¶ 45 3. *Medical-Negligence*

¶ 46 Defendants argue that the nature of a medical-negligence claim requires jurors to agree on at least one common departure from the standard of care. They rely on *Johnson v. Armstrong*, 2022 IL 127942, ¶¶ 52-53, 57, for the elements of a medical-negligence claim, and on *Snelson v. Kamm*, 204 Ill. 2d 1, 46 (2003), for the proposition that the claim requires the plaintiff to establish that the

[1]By "act or omission," we refer to the specific conduct plaintiffs claim fell below the applicable standard of care. For ease of reference, we call each such allegation a "departure" and use the terms interchangeably throughout this opinion.

defendant "deviated from the standard of care and that that deviation was the proximate cause of the plaintiff's injury" (emphasis omitted). In defendants' view, "that deviation" must refer to one departure; meaning, when several departures are alleged, all jurors must agree on the same one. Otherwise, defendants contend liability could be imposed without unanimous agreement that any specific departure caused the injury. See *Steed v. Rezin Orthopedics & Sports Medicine, S.C.*, 2021 IL 125150, ¶ 37 (explaining that cause in fact exists where the injury would not have occurred "but for" the defendant's conduct or where that conduct was a "substantial factor" in bringing about the harm).

¶ 47 We agree with defendants insofar as *Johnson*, *Snelson*, and *Steed* establish what a medical-negligence plaintiff must prove. A medical-negligence plaintiff must prove the applicable standard of care, a deviation from that standard, and an injury proximately caused by the deviation, generally through expert testimony. *Johnson*, 2022 IL 127942, ¶¶ 52-53, 57. *Snelson* and *Steed* likewise require a causal connection between the negligent conduct proved and the injury. But those cases go no further. They address the plaintiff's burden of proof, not whether all jurors must rely on the same alleged departure in finding that burden satisfied. Nor do they establish that each alleged act or omission is itself a separate finding requiring unanimous agreement. We therefore do not find these cases persuasive on the unanimity question presented here.

¶ 48 More instructive are Illinois negligence cases addressing how multiple alleged departures are treated when offered as alternative bases for a single claim of liability.

¶ 49 In *Witherell*, 118 Ill. 2d at 326, 332-33, the plaintiff alleged several acts of medical negligence, including the continued prescription of estrogen and the failure to prescribe anticoagulants. The appellate court ordered a new trial in part because the instructions did not

specifically require the jury to find that the prescription of estrogen caused or aggravated the plaintiff's injuries. *Id.* at 335-36. Our supreme court rejected that reasoning, explaining:

> "A causation instruction restricted to the defendant's prescription of estrogens would have been unjustifiably limited since the plaintiff also relied on other asserted acts of negligence, including the failure to prescribe anticoagulants. In fact, the jury was correctly advised that it must find the defendant's negligence caused the plaintiff's injuries." *Id.* at 336.

¶ 50 Earlier in its opinion, the court also applied the general-verdict rule in resolving a separate issue involving alternative grounds presented to the jury. *Id.* at 329. Although that discussion arose in the context of the statute of limitations and equitable estoppel, it likewise treated the alternative grounds as capable of supporting a single general verdict.

¶ 51 Other medical-negligence cases applying the general-verdict rule similarly treat separate negligence theories as alternative bases for a single verdict. See, *e.g.*, *Bergman v. Kelsey*, 375 Ill. App. 3d 612, 623 (2007) (where the plaintiff alleged four departures from the standard of care, explaining under section 2-1201(d) that the general verdict could be sustained on one theory even if other "alternative theories" should not have been submitted to the jury); *Arient v. Alhaj-Hussein*, 2017 IL App (1st) 162369, ¶¶ 28, 44-45 (where five alleged acts or omissions were submitted to the jury as alternative bases for liability, applying the general-verdict rule because the errors affected three allegations while two unaffected allegations remained to support the verdict); *Perez v. St. Alexius Medical Center*, 2022 IL App (1st) 181887, ¶ 64 (where multiple theories were presented, explaining that a general verdict may stand if at least one theory is supported by the evidence and unaffected by prejudicial error); see also *Studt v. Sherman Health Systems*, 2011 IL 108182, ¶ 47 (Karmeier, J., specially concurring) (where the plaintiffs pursued professional-

negligence and institutional-negligence theories against the hospital, explaining that under section 2-1201(d) a general verdict may stand if one theory is sufficient even if the other is defective).

¶ 52 The same treatment appears in cases addressing special interrogatories. In *Northern Trust Co. v. University of Chicago Hospitals & Clinics*, 355 Ill. App. 3d 230, 232 n.2 (2004), the plaintiffs alleged, among other things, that the hospital negligently failed to have a second operating room available for a cesarean delivery and failed to timely attach a fetal heart monitor. The hospital proposed separate special interrogatories asking whether each omission constituted a departure from the standard of care. *Id.* at 249-50. The circuit court refused them, and this court affirmed because a negative answer to either interrogatory would not control the general verdict; the other alleged departure could still support liability. *Id.* at 251-52. We described the allegations as "alternative theories of negligence," rather than independently dispositive issues. *Id.* at 253.

¶ 53 Other cases applying the special-interrogatory doctrine are consistent. See, *e.g.*, *Brannen v. Seifert*, 2013 IL App (1st) 122067, ¶¶ 84-87 (professional-negligence action; holding that an interrogatory directed to particular alleged breaches would not control the verdict because other acts or omissions could support a finding that the defendants breached the standard of care); *Givens v. City of Chicago*, 2023 IL 127837, ¶ 97 (Cunningham, J., concurring in part and dissenting in part, joined by Neville and Holder White, JJ.) (where the plaintiff pursued two alternative theories of willful and wanton conduct, explaining that an interrogatory addressing only one theory would not control the verdict because the other theory could still support liability).

¶ 54 Taken together, these authorities undermine defendants' premise that each alleged departure must be treated as a separate, independently necessary determination of liability. Illinois law, more so, points toward permitting multiple departures to serve as alternative bases for the required findings of negligence and proximate cause. Defendants identify no controlling or

persuasive authority requiring otherwise. Their position rests instead on an extrapolation from the burden of proof applicable in medical-negligence cases, which we do not find sufficient to impose the additional unanimity requirement they propose.

¶ 55 Plaintiffs also rely on decisions from other jurisdictions that have addressed this question directly. See, *e.g.*, *Christopherson v. St. Vincent Hospital*, 2016-NMCA-097, ¶¶ 23-34, 384 P.3d 1098; *Stoner v. Williams*, 54 Cal. Rptr. 2d 243, 251-54 (Ct. App. 1996); *Valentine v. Baxter Healthcare Corp.*, 81 Cal. Rptr. 2d 252, 265-66 (Ct. App. 1999); *Cleveland v. Wong*, 701 P.2d 1301, 1307-08 (Kan. 1985); *Lundeen v. Lentell*, 397 P.3d 453 (Kan. Ct. App. 2017) (table) (unpublished disposition). Those decisions are consistent with our reading of Illinois law. They require the requisite number of jurors to agree that the defendant was negligent and that the negligence caused the plaintiff's injury but do not require agreement on the particular act or omission that constituted the negligence.

¶ 56 4. *Criminal Cases*

¶ 57 The parties also dispute whether criminal cases addressing jury unanimity provide useful guidance. Defendants rely on what they describe as "multiple acts" cases, in which the evidence concerns several distinct criminal acts, each independently capable of constituting the offense charged. In those circumstances, defendants argue, jurors must unanimously agree on the same underlying act. They urge us to apply that principle here, where plaintiffs alleged several departures from the standard of care, any one of which could support liability for Ciane's death.

¶ 58 Plaintiffs respond that criminal unanimity doctrine operates within a distinct framework and that defendants identify no authority extending it to a medical-negligence action. They rely on *Galich*, which considered the criminal cases cited there "neither relevant nor helpful." *Galich*, 2024 IL App (1st) 230134, ¶ 48. To the extent criminal law offers guidance, plaintiffs contend that

the closer analogy is to "alternative means" cases, in which jurors need not agree on the particular means by which a single offense was committed.

¶ 59 Criminal decisions do not control this civil action. We nevertheless find the distinction between "alternative means" and "multiple acts" instructive in a limited respect. Those cases demonstrate that the existence of several factual alternatives does not, standing alone, determine what the jury must unanimously decide. In the criminal context, that determination generally depends on what the substantive law makes necessary to establish the offense.

¶ 60 Generally, in a criminal case, the jury must unanimously agree that the offense was proved beyond a reasonable doubt. *People v. Smith*, 233 Ill. 2d 1, 27 (2009). That does not necessarily require unanimity as to the means by which the offense was committed. *Id.* at 16, 27. As the United States Supreme Court has explained, although jurors must unanimously find each element of the offense, they "need not always decide unanimously which of several possible sets of underlying brute facts make up a particular element." *Richardson v. United States*, 526 U.S. 813, 817 (1999).[2]

¶ 61 That distinction between elements and means is rooted, in significant part, in *Schad v. Arizona*, 501 U.S. 624 (1991) (plurality opinion). There, the court upheld a first degree murder conviction after the State proceeded on theories of premeditated murder and felony murder without instructing the jurors to agree on either theory. *Id.* at 629-30. The plurality explained that "legislatures frequently enumerate alternative means of committing a crime without intending to define separate elements or separate crimes." *Id.* at 636. Because Arizona law treated premeditation and the commission of a felony as "mere means of satisfying a single *mens rea*

[2]For instance, where an element of the offense is force or the threat of force, some jurors might conclude that the defendant used a knife to create the threat, while others might conclude that he used a gun. *Richardson*, 526 U.S. at 817. "But that disagreement—a disagreement about means—would not matter as long as all 12 jurors unanimously concluded that the Government had proved the necessary related element, namely, that the defendant had threatened force." *Id.*

element," rather than as independent elements, disagreement over those theories did not defeat unanimity as to the offense. *Id.* at 636-45.

¶ 62 Illinois follows a similar approach. Our supreme court has explained that, although the first degree murder statute describes three "types" of murder, first degree murder is a single offense, and jurors therefore may "return a general verdict of guilty even if there is no juror unanimity with regard to *the means* by which the murder was committed." (Emphasis in original.) *Smith*, 233 Ill. 2d at 16 (citing on *Schad*, 501 U.S. at 631-32); see *People v. Jefferson*, 2024 IL 128676, ¶ 46 (relying on *Smith* to explain that a general verdict of guilty of first degree murder may rest on some jurors finding that the defendant fired the fatal shot and other jurors finding that he was accountable for the shooter's conduct); *People v. Travis*, 170 Ill. App. 3d 873, 890, 892 (1988) ("the jury need only be unanimous with respect to the ultimate question of defendant's guilt or innocence of the crime charged, and unanimity is not required concerning alternate ways in which the crime can be committed"); *People v. Dunbar*, 2018 IL App (3d) 150674, ¶¶ 29-30 (applying *Travis* where jurors could disagree whether the defendant acted as the principal or an accomplice).

¶ 63 Multiple-acts cases present a different concern. They typically arise when a single count is supported by evidence of several factually distinct criminal acts, each of which could independently constitute the charged offense. 75B Am. Jur. 2d *Trial* § 1447 (Aug. 2026 Update). The concern is not that jurors may disagree over how a single offense was committed, but that different jurors may convict based on different criminal acts without agreeing that the defendant committed any one of them. *Id.* Although a general unanimity instruction ordinarily suffices, a more specific instruction is required when the circumstances create a genuine possibility of such a fragmented verdict. See *United States v. Fawley*, 137 F.3d 458, 470-72 (7th Cir. 1998) (reversing a perjury conviction where a single count alleged two false statements and the instructions failed

to make clear that the jurors had to agree on the same particular statement); *United States v. Holley*, 942 F.2d 916, 928-29 (5th Cir. 1991) (same); *United States v. Beros*, 833 F.2d 455, 460-63 (3d Cir. 1987) (requiring a specific-unanimity instruction where two counts each encompassed several distinct acts, creating a risk that different jurors would rely on different acts to convict).

¶ 64 In *Schad*, Justice Scalia clarified the line between alternative means of committing a single offense and separate criminal acts. He observed that "it has long been the general rule that when a single crime can be committed in various ways, jurors need not agree upon the mode of commission." *Schad*, 501 U.S. at 649 (Scalia, J., concurring in part and concurring in the judgment). But he also explained that "[w]e would not permit, for example, an indictment charging that the defendant assaulted either X on Tuesday or Y on Wednesday, despite the 'moral equivalence' of those two acts." *Id.* at 651.

¶ 65 Whether separate acts require separate unanimous agreement turns principally on the substantive law defining the offense, not merely on the factual differences between the acts. For example, in *Richardson*, the defendant there was convicted of engaging in a continuing criminal enterprise under a federal statute requiring a "continuing series of violations" of the federal drug laws. (Internal quotation marks omitted.) *Richardson*, 526 U.S. at 815-16. The jury was instructed that it had to agree unanimously that the defendant committed at least three narcotics violations, but not on which three. *Id.* at 816. The United States Supreme Court granted certiorari to decide whether the individual violations were merely alternative means of establishing a single "series" element or were themselves elements requiring unanimous agreement. *Id.* at 817-18. Construing the statute in light of its "language, tradition, and potential unfairness," the Court held that each underlying violation required unanimous agreement because a "violation" "is not simply an act or conduct; it is an act or conduct that is contrary to law." *Id.* at 818, 820, 824.

¶ 66 Against that backdrop, we turn to *People v. Scott*, 243 Ill. App. 3d 167 (1993), defendants' principal authority on act-specific unanimity. In *Scott*, the defendant was charged in three separate counts with delivering controlled substances "to three undercover police officers in three unconnected transactions." *Id.* at 168. Although the State tendered separate guilty and not-guilty verdict forms for each count, the circuit court gave the jury only one general guilty form and one general not-guilty form. *Id.* The jury returned a guilty verdict. *Id.*

¶ 67 We reversed because the general verdict form made it possible for all jurors to vote guilty without agreeing that the defendant committed any one of the three charged deliveries. *Id.* at 169-70. Four jurors, for example, could have found the first delivery proved, four the second, and four the third. *Id.* at 169. The jurors would thus have agreed only that the defendant committed *some* offense, without unanimously finding him guilty of the same charged offense. *Id.* at 169-70.

¶ 68 *Scott* does not resolve the question before us. The three deliveries there were charged as separate offenses, yet the jury received one set of general verdict forms covering all three. *Id.* at 168. That procedure permitted a guilty verdict without unanimous agreement on a particular delivery "as set forth in each count of the indictment." *Id.* at 169. The defect thus concerned agreement on which separately charged offense the defendant committed, not agreement on the factual basis for a single offense. *Scott* therefore offers little guidance on whether several factual allegations supporting a single civil claim require separate unanimous findings.

¶ 69 Defendants' reliance on *People v. Cardamone*, 381 Ill. App. 3d 462 (2008), and *People v. Filipiak*, 2023 IL App (3d) 220024, fails for similar reasons. In *Cardamone*, the jury heard substantial evidence concerning both charged and uncharged acts. *Cardamone*, 381 Ill. App. 3d at 491-93, 498. The jury received separate instructions and verdict forms for each charge, but the circuit court refused the defendant's proposed instruction requiring the jurors to agree on the same

act underlying the charge. *Id.* at 497-99. The reviewing court reversed, concluding that, given the extraordinary volume of other-crimes evidence, an additional instruction was necessary to ensure that the verdict rested on the charged conduct rather than on different uncharged acts proved at trial. *Id.* at 498-500.

¶ 70 In *Filipiak*, the defendant was charged with two counts of predatory criminal sexual assault involving the same victim, each based on a separate alleged act—one near a shower and another on a couch. *Filipiak*, 2023 IL App (3d) 220024, ¶¶ 3-4. The instructions and verdict forms, however, did not identify which count corresponded to which alleged act. *Id.* ¶ 9. The jury found the defendant guilty of one count and not guilty of the other. *Id.* Because the record did not reveal which alleged act formed the basis of the guilty verdict, the reviewing court could not determine whether the jurors had unanimously agreed on the conduct underlying that conviction. *Id.* ¶¶ 16-18. Finding plain error, the court reversed that conviction. *Id.* ¶¶ 19-20.

¶ 71 These cases likewise do not address whether jurors must agree on a particular factual basis for a single offense. *Filipiak*, like *Scott*, involved separate criminal acts charged in separate counts, but the instructions and verdict forms failed to distinguish adequately which act supported which count. *Id.* ¶¶ 16-18. *Cardamone* addressed a different concern—the risk that extensive evidence of uncharged misconduct could lead jurors to convict based on conduct other than the acts charged. *Cardamone*, 381 Ill. App. 3d at 498-500. Both decisions were concerned with ensuring unanimity as to the conduct actually charged. Neither supplies a rule for determining when differing factual allegations require separate unanimous findings, rather than serving as alternative factual bases for a single offense—or, by analogy, a single civil claim.

¶ 72 Defendants' federal authorities fare somewhat better, but not for the reason defendants suggest. They rely principally on *Richardson*, which, as discussed, held that the jurors had to agree

on the specific violations comprising the "continuing series" required by the federal continuing-criminal-enterprise statute. *Richardson*, 526 U.S. at 824. Defendants emphasize the court's concern that treating those violations merely as alternative means could "cover up wide disagreement among the jurors about just what the defendant did, or did not, do" and invite the inference "that where there is smoke there must be fire." *Id.* at 819. Defendants contend that a similar risk exists here, where jurors may agree on liability without agreeing on the conduct supporting it.

¶ 73 We recognize this general concern, but it adds little value to defendants' proposition. *Richardson* did not announce a general rule for determining when distinct acts require separate unanimous agreement. Rather, it explained that jurors must agree on the elements of an offense, though not ordinarily on the means of satisfying an element—an inquiry that turns largely on the defining statute. *Id.* at 817-20. Applying that framework, the court held that the underlying violations identified in the criminal statute were themselves elements requiring unanimity. *Id.* at 817-20, 824. *Richardson* is therefore instructive insofar as it shows that the scope of required unanimity depends on what the substantive law requires the jury to find. Its statute-specific holding, however, does not readily translate to a civil negligence action.

¶ 74 That is because the unanimity inquiry is case-specific and may yield different results even in similar settings. *People v. Polk*, 2024 IL App (1st) 181933, which involved an enterprise statute comparable to the one in *Richardson*, shows why. There, the defendant was charged with racketeering conspiracy under the Illinois Street Gang and Racketeer Influenced and Corrupt Organizations Law (RICO statute) (720 ILCS 5/art. 33G (West 2012)). *Polk*, 2024 IL App (1st) 181933, ¶ 1. He argued that a conviction required unanimous agreement on the three specific underlying acts he agreed would be committed. *Id.* ¶ 168. This court rejected that argument because "[n]othing in the RICO statute warrants such an instruction." *Id.* ¶¶ 169, 173. Thus, even

in closely related criminal contexts, the governing substantive law may require different degrees of juror agreement. The criminal unanimity inquiry therefore does not readily transpose wholesale to this case, where the governing law is common-law negligence rather than a statute defining a criminal offense.

¶ 75 Defendants' remaining criminal authorities fail for similar reasons. See, *e.g.*, *State v. Fair*, 307 A.3d 1126, 1137 (N.J. 2024); *Beros*, 833 F.2d at 462-63; *Holley*, 942 F.2d at 928-29; *United States v. Gipson*, 553 F.2d 453, 458-59 (5th Cir. 1977); *United States v. Lapier*, 796 F.3d 1090, 1097-98 (9th Cir. 2015). Those cases likewise look to the governing substantive law in determining what degree of juror agreement is required, and their reasoning offers little guidance beyond that point in this civil medical-negligence action.

¶ 76 More fundamentally, defendants' analogy overlooks the distinct purposes served by criminal and civil law. As this court has recognized, "[t]he differences of purpose and goal in the civil and criminal procedures are 'very real.' " *People v. Moreno*, 319 Ill. App. 3d 445, 452 (2001) (quoting *People v. Moore*, 138 Ill. 2d 162, 169 (1990)). Although both systems serve a deterrent function, "criminal law punishes; civil law adjusts disputes and inequities." *Foster v. Alex*, 213 Ill. App. 3d 1001, 1004 (1991). The criminal authorities are useful because they direct us to the substantive law governing the claim or offense. But a unanimity requirement derived from the elements or structure of a criminal offense does not, without more, establish a corresponding requirement under Illinois medical-negligence law.

¶ 77 5. Schiff *and* Galich

¶ 78 Defendants identify *Schiff v. Friberg*, 331 Ill. App. 3d 643 (2002), and *Galich* as the two Illinois decisions most directly addressing the question before us. They contend that *Schiff* required the jurors to agree on at least one common allegation of negligence, while *Galich* permitted a

verdict without such agreement. In defendants' view, *Galich*'s discussion of unanimity was *dictum* and, in any event, was wrongly decided. Plaintiffs respond that *Schiff* did not decide whether the jurors must agree on the same alleged departure, while *Galich* squarely held that they need not. We agree with plaintiffs.

¶ 79 In *Schiff*, a medical-negligence action, the issues instruction stated that the plaintiff claimed the defendant " 'was negligent in one or more' " of three listed respects and that " 'one or more of the foregoing' " was a proximate cause of the plaintiff's injuries. *Id.* at 659. During deliberations, the jury asked whether a verdict for the plaintiff required "a una[ni]mous vote for at least one item (of 3)." (Emphasis and internal quotation marks omitted.) *Id.*

¶ 80 The trial court responded: " 'You must be unanimous that the Defendant was negligent in *one or more* of the respects set out in the instructions—and the Plaintiff was injured—and the negligence of the Defendant was a *proximate cause of the injuries* suffered by the Plaintiff.' " (Emphases in original.) *Id.* at 660. The *Schiff* court held, in a single sentence, that the trial court did not err in responding to the jury's question. *Id.*

¶ 81 *Schiff* therefore does not establish the rule defendants attribute to it. Defendants read the words "unanimous" and "one or more" together to mean that the jurors were required to agree on at least one common alleged departure. But the trial court largely repeated the language of the existing instructions and did not expressly answer whether all jurors had to agree on the same listed act or omission. Nor did the reviewing court analyze that question. See *id. Schiff* therefore approved the response actually given; it did not hold that jurors must unanimously agree on the same alleged departure.

¶ 82 *Galich* addressed the question more directly. There, the plaintiff alleged that an emergency-room physician deviated from the standard of care in four ways. *Galich*, 2024 IL App (1st) 230134,

¶¶ 1, 21. The jury was instructed that the physician was allegedly " 'negligent in one or more' " of four respects and that the plaintiff claimed " 'one or more of the foregoing was a proximate cause' " of the patient's injuries. *Id.* ¶ 21. During deliberations, the jury asked whether it needed " 'unanimous agreement on any one of the findings.' " *Id.* ¶ 22. The trial court answered that the jurors had to unanimously find the physician negligent but did not have to agree " 'as to which one of the four possible acts constitute[d] the negligence.' " *Id.*

¶ 83 This court affirmed. The majority first invoked the general-verdict rule, reasoning that, because the jury returned a general verdict and no special interrogatories had been requested, the defendant could not complain that the verdict did not disclose which negligence allegation the jury accepted. *Id.* ¶¶ 40-41 (citing *Witherell*, 118 Ill. 2d at 329). The majority then addressed the unanimity question on the merits, holding that "[t]he specific allegations of [the physician's] acts or omissions are not separate elements of the claim on which the jury must unanimously agree," provided the jurors agreed that the physician failed to meet the applicable standard of care and that his negligence caused the plaintiff's injuries. *Id.* ¶ 55. Because "[t]he jury's verdict indicated they unanimously agreed [the physician's] negligence caused [the patient's] brain injury," the majority concluded, "[t]hat is all the law requires." *Id.* ¶ 56.

¶ 84 Defendants contend that this merits discussion was *dictum* because the majority had already relied on the general-verdict rule. See *id.* ¶¶ 40-41. We are not persuaded. The majority expressly set the first rationale aside and resolved the legal question presented. *Id.* ¶ 42 (stating "[s]pecial interrogatories aside"). A reviewing court may rest its judgment on more than one independently sufficient ground. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 236 (2010). The unanimity analysis was therefore, at minimum, an alternative basis for the judgment.

¶ 85 Even if that analysis were unnecessary to the disposition, it would at least constitute judicial *dictum*. *Dictum* generally takes two forms: *obiter dictum* and judicial *dictum*. *People v. Williams*, 204 Ill. 2d 191, 206 (2003). *Obiter dictum* consists of remarks unnecessary to the disposition of an issue before the court. *Id.* Judicial *dictum*, although likewise unnecessary to the result, addresses an issue that the parties briefed and argued and thus "have the force of a determination by a reviewing court and should receive dispositive weight in an inferior court." *Id.* Because the parties in *Galich* fully litigated the unanimity issue and the majority expressly decided it, the analysis was not an *obiter* aside.

¶ 86 The trial court here therefore did not err by treating *Galich* as authoritative. That does not, however, foreclose our own examination of its reasoning. See *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008) (one appellate panel is not bound by another).

¶ 87 Defendants emphasize that *Galich* cited no Illinois decision expressly holding that jurors in a medical-negligence action may rely on different alleged departures. That observation is fair, but it does not establish that *Galich* reached the wrong result. Under *Dunleavy*, jurors must unanimously agree on the matters they are required to find, but they need not reach those findings through the same reasoning. *Dunleavy*, 129 Ill. at 144. In a medical-negligence action, those matters are the elements of the claim: the applicable standard of care, a deviation from that standard, and an injury proximately caused by the deviation. Illinois medical-negligence cases, thereafter, treat multiple alleged negligent acts as alternative bases for establishing those elements, not as additional elements requiring separate agreement. *Galich*, therefore, appropriately reached the same conclusion.

¶ 88 Applied here, the trial court used Illinois Pattern Jury Instructions, Civil, No. 20.01 (revised Aug. 2023) (hereinafter IPI Civil No. 20.01), the standard issues instruction, to frame plaintiffs'

allegations against Dr. Bicalho and nurse Jimenez. As to Dr. Bicalho, the instruction identified three alleged departures from the standard of care: (1) failing to call for an emergency cesarean section, (2) failing to place a fetal scalp electrode, and (3) instructing Jeryis to labor down. As to nurse Jimenez, it identified three others: (1) failing to question Dr. Bicalho's order, (2) failing to advocate for a fetal scalp electrode, and (3) failing to use the chain of command.

¶ 89 The instruction stated that plaintiffs claimed each defendant was negligent "in one or more" of the listed respects and that "one or more of the foregoing" was a proximate cause of plaintiffs' injuries. That language required the jury to find negligence and proximate cause based on at least one alleged act or omission but did not require the jurors to agree on which particular act or omission satisfied those requirements.

¶ 90 The current comment to IPI Civil No. 20.01 provides additional support for that reading. IPI Civil No. 20.01, Comment (rev. Feb. 2026). The Supreme Court Committee on Jury Instructions in Civil Cases (Committee), whose charge includes studying and recommending new or revised civil pattern instructions, revised the comment in February 2026 to cite *Galich* in addressing unanimity where multiple acts or omissions are alleged. See *id.* The Committee subsequently revised IPI Civil Nos. B45.01, B45.02, and B45.03 (rev. Aug. 2026), the instructions governing the use of verdict forms in negligence cases. Those revisions expressly instruct that, although the jurors must unanimously decide that the defendant was negligent and that the defendant's negligence proximately caused the plaintiff's injuries, they "do not need to be unanimous as to which of the claimed acts or omissions of [defendant] constitute the negligence." IPI Civil No. B45.01; IPI Civil No. B45.02; IPI Civil No. B45.03. The accompanying comments explain that this language is based on *Galich* and is intended to eliminate the "risk that jurors might

wrongly believe they must be unanimous as to a specific claim of negligence." IPI Civil No. B45.01, Comment; IPI Civil No. B45.02, Comment; IPI Civil No. B45.03, Comment.

¶ 91 We do not treat these revisions or comments as an expression of our supreme court's view on the question. Indeed, the supreme court has explained that publication of an Illinois Pattern Jury Instruction does not constitute advance judicial approval. *Powers v. Illinois Central Gulf R.R. Co.*, 91 Ill. 2d 375, 385 (1982). Illinois Supreme Court Rule 239(a) (eff. Apr. 8, 2013), however, requires a trial court to use an applicable Illinois Pattern Jury Instruction unless the court determines that it does not accurately state the law. The comments therefore are not controlling, but it provides useful guidance concerning the operation of the standard instruction and is consistent with its text.

¶ 92 The trial court's response to the jury's question was likewise consistent with this framework. Read together with the written instructions, the response did not permit liability based merely on a general belief that a defendant had been negligent in some unspecified sense. Each juror still had to find that the defendant departed from the applicable standard of care in at least one alleged respect and that the negligence found proximately caused plaintiffs' injury. The jurors could disagree about which alleged departure supplied that basis, but each juror had to find both negligence and causation. The trial court therefore did not misstate Illinois law.

¶ 93 B. Defendants' Proposed Special Interrogatories

¶ 94 Defendants next contend that the trial court erred by refusing six special interrogatories they tendered during jury deliberations. They maintain that the interrogatories would have tested whether the jurors unanimously agreed on a particular negligent act or omission that proximately caused plaintiffs' injury. Plaintiffs respond that the interrogatories were improper in form and, in any event, were tendered only after deliberations had begun.

¶ 95 Special interrogatories are governed by section 2-1108 of the Code (735 ILCS 5/2-1108 (West 2024)), which provides that, "[w]ithin the discretion of the court, the jury may be asked to find specially upon any material question or questions of fact submitted to the jury in writing." We review the trial court's decision to submit or refuse a special interrogatory for an abuse of discretion. *Id.*; *Cotton v. Coccaro*, 2023 IL App (1st) 220788, ¶ 27.

¶ 96 The purpose of a special interrogatory is to test the general verdict against the jury's finding on an ultimate issue of fact. *Simmons*, 198 Ill. 2d at 555. A special interrogatory is in proper form if it (1) concerns an ultimate issue of fact upon which the parties' rights depend and (2) can be answered in a manner inconsistent with a general verdict that might be returned. *Id.* at 563. The inconsistency must be clearly and absolutely irreconcilable with the general verdict; if a reasonable hypothesis permits the two to stand together, the interrogatory does not test the verdict. *Id.* at 555-56. A special interrogatory also must consist of " 'a single, direct question that, standing on its own, is dispositive of an issue in the case such that it would, independently, control the verdict with respect thereto.' " *Givens*, 2023 IL 127837, ¶ 70 (quoting *Northern Trust*, 355 Ill. App. 3d at 251).

¶ 97 That requirement is significant where the plaintiff submits alternative theories of negligence. If an interrogatory addresses only one theory, a negative answer does not test the general verdict when another theory remains available to support liability. *Northern Trust*, 355 Ill. App. 3d at 252. And several interrogatories cannot be considered together to cure that defect. Each must, standing alone, be dispositive of an issue and independently test the verdict; the "piggybacking" of separate interrogatories is not permitted. *Id.* at 253; see *Inman v. Howe Freightways, Inc.*, 2019 IL App (1st) 172459, ¶ 117 ("a party cannot 'piggy-back[ ]' multiple

special interrogatories together to ensure that a responsive answer is inconsistent with a general verdict that might be returned").

¶ 98 Here, defendants tendered six special interrogatories after the court responded to the jury's question concerning unanimity. The first asked, "Do you unanimously agree the same act or omission of negligence was the proximate cause of Plaintiffs' injuries?" The next three asked whether the jurors unanimously agreed that Dr. Bicalho (1) failed to call for an emergency cesarean section between 12:15 p.m. and 12:20 p.m., (2) failed to place a fetal scalp electrode between 11:12 a.m. and 11:15 a.m., or (3) instructed Jeryis to labor down after 8:30 a.m., and that the identified conduct was a proximate cause of the injury. The remaining two addressed nurse Jimenez's failure to advocate for placement of a fetal scalp electrode and her failure to use the chain of command. Defendants did not tender an interrogatory addressing nurse Jimenez's alleged failure to question the labor-down instruction.

¶ 99 The first interrogatory was not in proper form. It did not ask the jury to decide a specific ultimate fact underlying liability. Instead, it asked whether the jurors agreed on the same alleged act or omission. As explained above, however, unanimity was required on the findings necessary to impose liability, not on the particular alleged departure supporting those findings. A negative answer therefore could coexist with a valid general verdict for plaintiffs and would not test that verdict. See *Simmons*, 198 Ill. 2d at 555-56; see *Nassar v. County of Cook*, 333 Ill. App. 3d 289, 296 n.4 (2002) (holding that interrogatories asking, " 'Was your verdict unanimous as to any single act of negligence?' " and " 'Did you unanimously find that a single act of negligence proximately caused the plaintiffs' injuries?' " were properly denied because they did not test the general verdict against a specific ultimate fact).

¶ 100 The five allegation-specific interrogatories fare no better. Even assuming each concerned a material factual issue, none independently tested the general verdict. A negative answer concerning any one of Dr. Bicalho's alleged departures would leave the other two available to support the verdict against her. Likewise, a negative answer concerning either of the two departures addressed as to nurse Jimenez would leave other alleged departures unresolved. In each instance, therefore, a reasonable hypothesis remained under which the special finding and general verdict could be reconciled. *Northern Trust*, 355 Ill. App. 3d at 251-53; *Inman*, 2019 IL App (1st) 172459, ¶ 119.

¶ 101 Considering the interrogatories collectively does not cure that defect. As *Northern Trust* explains, an interrogatory must stand on its own and independently test the verdict; separate interrogatories may not be "piggyback[ed]" to produce an inconsistency that no individual answer would produce. *Northern Trust*, 355 Ill. App. 3d at 253. The parties also dispute whether the allegation-specific interrogatories were improper because they combined questions of departure and proximate cause. Defendants acknowledge that some of the interrogatories contained more than one component but contend that combining negligence and proximate cause is permissible in these circumstances. Because the interrogatories fail the independent-control requirement, we need not resolve that additional dispute.

¶ 102 Plaintiffs also contend that defendants' proposed interrogatories were untimely. Section 2-1108 provides that special interrogatories are to be "tendered, objected to, ruled upon and submitted to the jury as in the case of instructions." 735 ILCS 5/2-1108 (West 2024). Section 2-1107(c), in turn, contemplates that instructions ordinarily will be settled at an instruction conference before closing arguments. *Id.* § 2-1107(c). Defendants did not tender the interrogatories at the instruction conference or before closing arguments, but only after the jury began deliberating

and the court answered its question concerning unanimity. That timing was a circumstance the trial court could consider in exercising its discretion. We need not decide, however, whether they were untimely because the interrogatories were not in proper form.

¶ 103 When defendants tendered the interrogatories, the trial court explained that it did not want to "contradict" the answer it had just given the jury or lead the jurors to believe that they were required to agree on the individual allegations. In denying defendants' posttrial motion, the court further concluded that "[d]efendants' proposed special interrogatories did not meet the requirements listed above and, therefore, were not in a proper form."

¶ 104 We agree with that conclusion. As discussed above, the jury was not required to agree on the same alleged departure, so the first interrogatory sought a finding that was not necessary to the verdict. The remaining interrogatories each left alternative allegations available to support liability and therefore could not independently test the general verdict. The trial court therefore did not abuse its discretion in refusing defendants' proposed special interrogatories, and that ruling provides no basis for disturbing the judgment.

¶ 105 III. CONCLUSION

¶ 106 For the foregoing reasons, we conclude that the trial court neither erred in its response to the jury's unanimity question nor abused its discretion in refusing defendants' proposed special interrogatories. The judgment of the circuit court is affirmed.

¶ 107 Affirmed.

*Flores v. Advocate Health & Hospitals Corp.*, **2026 IL App (1st) 252198**

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| **Decision Under Review:** | Appeal from the Circuit Court of Cook County, No. 2020-L-010272; the Hon. Nichole C. Patton, Judge, presiding. |
| **Attorneys for Appellant:** | Robert R. Thomas, J. Timothy Eaton, Jonathan B. Amarilio, and Adam W. Decker, of Taft Stettinius & Hollister LLP, of Chicago, for appellants. |
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