

2026 IL App (1st) 250155-U
No. 1-25-0155
Order filed October 23, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT, SIXTH DIVISION

MARLON HAGAN, Plaintiff-Appellant-Cross-Appellee,

v.

WESTERN AVENUE NISSAN, INC., Defendant-Appellee-Cross-Appellant,

and

NISSAN NORTH AMERICA, INC., Defendant-Appellee.

Appeal from the Circuit Court of Cook County, Illinois.
Honorable Brendan A. O'Brien, Judge, Presiding.
No. 2021 L 000446

PRESIDING JUSTICE GAMRATH delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court: correctly entered judgment for the defendants based on the jury verdict finding the plaintiff 90% contributorily negligent; acted within its discretion in excluding statements from a deceased individual and an unidentified employee of the defendant; and correctly found the defendant car manufacturer had no duty to warn of a post-sale defect, despite its past practice of issuing voluntary recalls for other defects.

¶ 2 Eighteen-year-old Marlon Hagan veered over the median while driving and collided with an oncoming car. Hagan was severely injured, and his passenger, Jada Evans, was killed.

¶ 3 Hagan sued Nissan North America, Inc., the car designer and manufacturer, and Western Avenue Nissan, Inc., the dealership, alleging a defect in the steering column's shear capsules and Western's failure to inspect, diagnose, or repair the issue. Defendants argued the accident was caused by Hagan attempting a high-speed steering maneuver at over 60 mph in a 35-mph zone.

At trial, the jury allocated 90% of fault to Hagan, 10% to Western, and 0% to Nissan. Because Hagan's contributory fault exceeded 50%, the trial court entered judgment for the defendants. Hagan appeals on three grounds: alleged inconsistency in the jury's verdict; the exclusion of statements made by Jada Evans and an unidentified porter; and the court's finding that Nissan had no post-sale duty to warn about the defect. Western cross-appeals, arguing that its motion for judgment notwithstanding the verdict (JNOV) should have been granted. We affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 A. The Accident

¶ 6 In 2018, Jada Evans and her mother Diana purchased a used 2015 Nissan Sentra from Western. The vehicle had a tilt-steering feature controlled by a locking lever that allowed limited vertical and horizontal adjustment.

¶ 7 At approximately 7:45 p.m. on March 30, 2019, Hagan was driving the Sentra eastbound on 162nd Street in South Holland. After stopping at a light, he accelerated to pass another vehicle, then abruptly swerved left across the median and was struck by a SUV.

¶ 8 Witnesses gave conflicting accounts regarding Hagan's speed and the steering wheel's position. Hagan testified that the steering wheel unexpectedly dropped, causing the crash, and that he was coming from a full stop, was in no hurry, was not speeding, and never speeds. Although he

initially had no memory of the crash, Hagan testified he developed memories of what had happened over the next few months, based on his dreams and a song he heard.

¶ 9 SUV driver Chanel Sykes testified she heard tires screeching and saw the Sentra in the median as if attempting a sudden U-turn in front of her. She slammed on her brakes but could not avoid hitting it. Roy Butler, driving behind Hagan, estimated Hagan's speed at 35-40 mph, and saw Hagan abruptly swerve over the median and crash into the SUV. Butler and another driver, Eliud Quezada, stopped to help Hagan out of the car. Butler testified it was hard to get him out because the steering wheel was "really close to his legs." Quezada likewise testified that the steering wheel was down by Hagan's legs and did not appear to be in a drivable position.

¶ 10 Officer Rick Coulom, a specialist with the Suburban Major Accident Reconstruction Team (SMART team), investigated the crash. He photographed yaw marks across the median indicative of high speed. He concluded the marks were caused by acceleration rather than braking. Based on the striations, he calculated the Sentra's speed at 68 mph at impact and determined Hagan was the sole cause of the crash. Coulom photographed the steering wheel in the "up" position but did not investigate mechanical issues.

¶ 11 Hagan presented expert Charles Roberts, a mechanical engineer, who testified that defective shear capsules in the steering column could cause the steering wheel to drop, producing a leftward jerk and pushing the driver's body right. If the driver's foot was already on the accelerator, the drop could cause further acceleration, consistent with the yaw marks.

¶ 12 Three weeks after the crash, Sykes' friend Antoine Nicholas saw the Sentra at the tow yard and noted the steering wheel was less than three inches from the seat, with the steering wheel lever in locked position. The Sentra was later sold for scrap and never inspected by experts.

¶ 13 B. Steering Wheel Issues Before the Accident

¶ 14 In the month preceding the accident, Hagan, Jada, and their parents repeatedly complained to Western about the steering wheel malfunctioning. In early March 2019, Hagan's parents, Kiya Simmons-Hagan and Marlon Hagan Sr. (Senior), observed the steering wheel down by the seat. Kiya attempted to lift it, but it fell back down. Senior maneuvered it back in place.

¶ 15 On March 5, 2019, Senior brought the Sentra to Western's service center for steering wheel and transmission issues. The repair order reflects that Jada declined a steering wheel diagnostic to be performed and said she would bring the car back later.

¶ 16 On March 11, Kiya experienced another steering wheel drop while driving on the expressway. Later that day, Hagan and Jada brought the car to Western's sales center and told salesman Melvin Ealey that the wheel would "fall in your lap." Ealey "mess[ed] with" the steering wheel but did not advise Hagan and Jada to take the car to the service center.

¶ 17 A few days later, Senior experienced a steering wheel drop while backing out of his driveway. On March 20, Diana Evans had the car towed to Western for repairs. The next day, Diana and her boyfriend, Marquis Gilmore, met with Western's service advisor David Vargas and reported the steering wheel was "collapsing and falling." Vargas did not recall the meeting but testified that it was procedure to record all customer concerns on the repair order and have the customer review it before signing.

¶ 18 The March 21 repair order, prepared by Vargas and signed by Diana, listed only a transmission issue. Technician Karol Rola-Podczaski repaired the transmission and did not experience steering wheel problems during his test drive. Western's executive manager, Richard

Ruscitti, testified that Western may only perform repairs authorized in writing on the repair order. Hagan and Jada retrieved the Sentra on March 30. The accident occurred later that day.

¶ 19 C. The Excluded Evidence

¶ 20 The trial court excluded Hagan’s evidence that, during the March 21 visit, Diana placed Jada on speakerphone and Jada told Vargas the steering wheel had “fallen in [her] lap,” exposing internal wiring on the inside of the wheel. A porter, whose name is not identified in the record, allegedly confirmed the wheel was down when he retrieved the car. He said, “Yes, it was down, but all I did was push it back up into place.”

¶ 21 The court found the porter’s statement unreliable and speculative because he was never identified or deposed. As to Jada’s statement, the trial court acknowledged it “may go to notice,” but found it was “fundamentally unfair” because she was not available for cross-examination. The court permitted testimony that Diana told Vargas about steering wheel issues.

¶ 22 D. Nissan’s Knowledge of the Steering Wheel Defect

¶ 23 To support his theory that Nissan knew of defective shear capsules and failed to warn consumers, Hagan called Nissan employees Kevin Betts and Selim Hammoud. Betts testified Nissan received 53 warranty claims in 2016 for loose steering columns but had no evidence of loss of control or accidents caused by the issue. Nissan did not issue a technical service bulletin to instruct dealerships on how to repair the issue because repair is replacing the steering column, which was already documented in the service manual.

¶ 24 Betts test-drove a Sentra with ruptured shear capsules and a steering column identical to the one involved in this case. He drove it from Tennessee to Chicago and found the car remained steerable and safe to drive.

¶ 25 Hammoud testified that Nissan voluntarily recalls vehicles it believes are not compliant with the National Traffic and Motor Vehicle Safety Act (49 U.S.C. §§ 30101, *et seq.*) (Safety Act). In 2016, Nissan’s field quality investigations department became aware of issues with the Sentra steering column. It identified resin problems in the shear capsules and used Weibull modeling to predict 530 future steering column failures. Nissan never told the National Highway Transportation Safety Authority (NHTSA) about this defect or issued a Technical Service Bulletin (TSB) to dealers. Had it, it would have risked recall of 666,430 Sentras that were on the road. The department concluded that the Sentra remained steerable even with broken capsules. Hammoud personally test-drove a Sentra with a dropped wheel and determined the issue “did not rise to the level of an immediate risk” that would warrant a safety recall.

¶ 26 E. Procedural History

¶ 27 Hagan filed suit against Nissan and Western on January 14, 2021, asserting strict liability, negligence, and willful and wanton claims against Nissan, and negligence and willful and wanton claims against Western. He sought compensatory and punitive damages.

¶ 28 At trial’s end, the jury received four verdict forms. Form A stated the jury found for Hagan and against either or both defendants, and had blanks for Hagan’s total damages, the percentage of fault allocable to Hagan, Nissan, and Western, and Hagan’s recoverable damages. Form B stated the jury found for both defendants and against Hagan. Form B-1 stated the jury found for Western and against Hagan. Likewise, Form B-2 stated they found for Nissan and against Hagan. The court instructed the jury to use B-1 and B-2 if Hagan’s contributory negligence was over 50%.

¶ 29 The jury returned Form A, finding Western liable and Nissan not liable. It assessed total damages of \$150,000, allocating fault 90% to Hagan, 10% to Western, and 0% to Nissan. When

the jury handed up its verdict, the court observed that the jurors “found the plaintiff 90 percent, but still give a verdict. So it should be Verdict Form B.” The court then called counsel into a chambers conference.

¶ 30 At the conference, Hagan’s counsel objected to the verdict as legally inconsistent. The court found the jury’s verdict consistent but on the wrong form. Nonetheless, Hagan urged the court to send the jury back to continue deliberating, while defendants argued it would be improper to give Hagan a second bite at the apple after a verdict had been reached.

¶ 31 The court then polled each juror, “was this and is this your verdict?” and each juror answered yes. After polling each juror, the court entered judgment for defendants under section 2-1116 of the Code of Civil Procedure (735 ILCS 5/2-1116 (West 2024)), which bars recovery when a plaintiff’s contributory fault exceeds 50%.

¶ 32 In his post-trial motion, Hagan sought a new trial on the grounds that the verdict is legally inconsistent because the jury recorded it on the wrong form. The court denied the motion, finding that the verdict is not legally inconsistent.

¶ 33 To preserve its arguments for appellate review, Western filed a posttrial motion for JNOV on duty and proximate cause. The trial court denied the motion, finding duty and proximate cause were issues of fact.

¶ 34 II. ANALYSIS

¶ 35 A. Jury Verdict

¶ 36 Hagan argues the jury’s verdict is inconsistent as a matter of law and the trial court’s judgment upon that verdict cannot stand. We disagree. If a verdict is legally inconsistent, it must be set aside and a new trial granted. *Mrowca v. Chicago Transit Authority*, 317 Ill. App. 3d 784, 786 (2000). However, we exercise all reasonable presumptions in favor of the verdict and will

not find it irreconcilably inconsistent if it is supported by “any reasonable hypothesis.” (Internal quotation marks omitted.) *Id.* The key question is the jury’s intent. *Id.*

¶ 37 *Mrowca* is instructive. The jury found plaintiff 60% at fault but used a verdict form intended only if plaintiff’s liability was below 50%. After polling the jury as to whether they believed plaintiff was 60% negligent, each juror answered in the affirmative. We affirmed the court’s judgment in favor of defendant, finding the verdict was not legally inconsistent, but merely entered on the wrong verdict form. *Id.* at 788. Because the jury’s intent was clear, the court properly molded the verdict to conform to its findings and Illinois law. *Id.* at 786, 788 (citing *Western Springs Park District v. Lawrence*, 343 Ill. 302, 310–11 (1931)). The jury’s purported award of 40% of plaintiff’s damages therefore could not be given effect under Illinois law. *Mrowca*, 317 Ill. App. 3d at 788.

¶ 38 Here, as in *Mrowca*, the jury rendered a consistent verdict on the wrong verdict form. On its face, the verdict form plainly states that Hagan is 90% at fault for the accident. Although the court did not poll the jurors specifically as to the allocation of fault, it asked each juror, “was this and is this your verdict?” After each juror answered yes, the court entered judgment for defendants under section 2-1116 of the Code of Civil Procedure (735 ILCS 5/2-1116 (West 2024)), which bars recovery when a plaintiff’s contributory fault exceeds 50%.

¶ 39 We note that the circumstances of the crash were heavily disputed at trial. Hagan testified that he was not speeding and that the accident resulted from the steering wheel dropping. However, he acknowledged that he initially had no memory of the accident and later formed memories based on dreams and a song. Officer Coulom contradicted Hagan’s account, estimating his speed at 68 miles per hour and photographing the steering wheel in the “up” position after Hagan and Jada were removed from the car. After considering the conflicting

testimony, the jury found Hagan 90% at fault. Under Illinois law, the trial court properly gave effect to this express allocation of fault under Illinois law by entering judgment for defendants. See 735 ILCS 5/2-1116 (West 2024).

¶ 40 Hagan’s reliance on *Hassard v. DS Retail, LLC*, 2023 IL App (4th) 220687, is misplaced because that case involved multiple verdicts inconsistent with each other. Initially, the jury found plaintiff sustained \$110,000 in damages but was 80% negligent, and it awarded her \$22,000. The court discharged the jury and entered judgment, then *sua sponte* reassembled the jury and explained no damages would be awarded if plaintiff was over 50% negligent. *Id.* ¶¶ 21-22. The foreperson said they had not understood that and requested time “to go back and discuss it.” After a second round of deliberations, the jury returned a verdict for plaintiff, finding she sustained \$22,000 in damages and was not negligent. *Id.* ¶ 25.

¶ 41 The *Hassard* court set aside both verdicts. Having been discharged, the jury lacked authority to return the second verdict, and the first verdict was inconsistent. *Id.* ¶¶ 44, 46.

¶ 42 *Hassard* is distinguishable because there was no “reasonable hypothesis” (*Mrowca*, 317 Ill. App. 3d at 786) under which the first verdict could be preserved. The foreperson said the first verdict was contrary to the jury’s intent, and the jury proceeded to issue a second verdict entirely at odds with the first one. Since “[t]he issue is one of the jury’s intent” (*id.* at 786), a new trial was required. By contrast, here there is no such inconsistency. The jury verdict form reflects the jury intended to find Hagan 90% at fault, and the trial court properly entered judgment upon that verdict in accordance with the law on contributory negligence.

¶ 43 B. Statements of Jada and the Unidentified Porter

¶ 44 Hagan next argues the trial court erred by excluding evidence of statements made by Jada and the unidentified porter during Diana and Gilmore’s March 21 conversation with Vargas. We

review the trial court's exclusion of evidence for abuse of discretion. *Zaragoza v. Ebenroth*, 331 Ill. App. 3d 139, 141 (2002).

¶ 45 Hearsay is an out of court statement offered to prove the truth of the matter asserted. Ill. R. Evid. 801(c). It is generally inadmissible because the declarant's credibility cannot be assessed and the opposing party cannot cross-examine the declarant. *People v. Gardner*, 2024 IL App (4th) 230443, ¶ 48. Even when a hearsay exception applies, the trial court may exclude the statement if it is insufficiently reliable. *Zaragoza*, 331 Ill. App. 3d at 142-43.

¶ 46 1. Jada's Statement

¶ 47 Hagan contends Jada's statement was not hearsay because it was offered to show Vargas had notice of the steering wheel problem on March 21, not for the truth of the matter asserted. See *Carlson v. Michael Best*, 2021 IL App (1st) 191961, ¶ 101 (a statement made to prove a listener had notice of the information contained therein is not hearsay).

¶ 48 Even assuming the statement was admissible for notice, it was cumulative of other testimony. Diana and Gilmore both testified that Diana told Vargas about the steering wheel issue. These same witnesses would have testified to Jada's statement, and if the jury found them credible, adding additional testimony about what Jada said would have been superfluous. Thus, the trial court acted within its discretion in excluding cumulative evidence. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002) (exclusion of cumulative evidence is within the trial court's discretion).

¶ 49 Hagan also invokes the completeness doctrine, arguing Jada's statement was necessary to place Diana and Gilmore's testimony in context. See *People v. Craigen*, 2013 IL App (2d) 111300, ¶¶ 42, 46 (under the completeness doctrine, if one party introduces part of a statement, the opposing party may introduce the remainder of the statement as needed to prevent the jury

from being misled, to place the admitted portion in context so its true meaning is conveyed, or to shed light on the meaning of the admitted portion). The doctrine does not apply. Hagan was the proponent of Diana and Gilmore’s testimony and sought to bolster it with Jada’s alleged statement. Also, Jada’s statement was not necessary to clarify or contextualize their testimony that Diana informed Vargas of the steering wheel issue.

¶ 50

2. Porter’s Statement

¶ 51

Hagan argues the porter’s statement was admissible as an admission of a party-opponent, a hearsay exception. He relies on *Vojas v. Kmart Corp.*, 312 Ill. App. 3d 544 (2000), and *Pavlik v. Wal-Mart Stores*, 323 Ill. App. 3d 1060 (2001), where statements by unidentified employees were admitted as party admissions.

¶ 52

In *Vojas*, plaintiff slipped and fell on a greasy substance. One of defendant’s employees allegedly said, “I thought they cleaned that up,” to which another replied, “Apparently not.” *Vojas*, 312 Ill. App. 3d at 546. We held these statements by unidentified employees “were properly admitted either because they were not hearsay or as an exception to the hearsay rule as a party admission.” *Id.* at 548. See also *Pavlik*, 323 Ill. App. 3d at 1066 (in slip and fall case, alleged statement of unidentified employee that puddle “should have been cleaned up earlier” created triable issue of fact on the issue of notice).

¶ 53

Neither *Vojas* nor *Pavlik* addressed the reliability of the hearsay statements at issue. We examined this issue in *Zaragoza*, 331 Ill. App. 3d at 142-43, where the court upheld exclusion of a hearsay statement that qualified as a party admission but was inherently unreliable because it could not be verified and the declarant could not be examined. *Zaragoza*, 331 Ill. App. 3d at 142-43; see also *Kurdi v. DuPage County Housing Authority*, 161 Ill. App. 3d 988, 993 (1987)

left its control. *Jablonski*, 2011 IL 110096, ¶¶ 111-12; see also *Modelski v. Navistar Int’l Transp. Corp.*, 302 Ill. App. 3d 879, 888 (1999).

¶ 58 Here, Nissan sold the Sentra in April 2015. Betts and Hammoud testified Nissan first learned of the shear capsule defect in 2016. Hagan argues Nissan knew at the time of sale “that a dropping steering wheel was dangerous,” citing the Sentra’s owner’s manual warning not to adjust the steering wheel while driving or “[y]ou could lose control of your vehicle and cause an accident.” The trial court excluded this warning, and properly so. General knowledge in 2015 that adjusting a steering wheel while driving is unsafe does not establish Nissan knew of the specific shear capsule defect that may have caused Hagan’s accident. Nor is it sufficient to trigger a duty under *Jablonski* to warn about the shear capsule defect.

¶ 59 Hagan next argues that Nissan voluntarily undertook a duty to warn about the shear capsule defect by (1) issuing voluntary recalls for cars affected by other unrelated safety issues and (2) investigating the shear capsule defect. He cites Restatement (Second) of Torts §§ 323 (1965), which provides:

“One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other’s reliance upon the undertaking.”

The trial court correctly rejected Hagan’s theory.

¶ 60 First, Hagan cites no authority to establish that issuing past voluntary recalls for unrelated safety defects creates a duty for Nissan to issue a recall for this defect. On the contrary, “[u]nder

a voluntary undertaking theory of liability, the duty of care to be imposed upon a defendant is limited to the extent of the undertaking.” *Bell v. Hutsell*, 2011 IL 110724, ¶ 12. Courts interpret this duty narrowly.

¶ 61 Nissan’s issuance of recalls for unrelated defects is “limited to the extent of the undertaking” (*Bell*, 2011 IL 110724, ¶ 12) and does not extend to the shear capsule defect at issue here. As Nissan points out, imposing such a duty would be contrary to public policy, since it would discourage manufacturers from investigating safety issues or issuing voluntary recalls.

¶ 62 Second, section 323 does not apply. Hagan presented no evidence that he relied on Nissan’s undertaking. Nor has he presented evidence that Nissan’s actions in issuing voluntary recalls for other cars or investigating the shear capsule defect increased the risk of harm to him.

¶ 63 *Wakulich v. Mraz*, 203 Ill. 2d 223 (2003), illustrates when section 323 applies. In *Wakulich*, a 16-year-old at a party got drunk and lost consciousness. The hosts undertook to take care of her but did not seek medical aid and actively prevented other partygoers from seeking aid. *Id.* at 227. Because their malfeasance increased the risk of harm to her, they could be held liable for her death under a voluntary undertaking theory. *Id.* at 244-45.

¶ 64 By contrast, Nissan’s actions did not increase the risk of harm to Hagan. The risk to Hagan from a dropped steering wheel would have been the same whether Nissan recalled other cars with unrelated safety issues or investigated the shear capsule defect or not. Because no evidence supported Hagan’s voluntary undertaking theory, the trial court properly declined to instruct the jury on it.

¶ 65 D. Western’s Cross-Appeal

¶ 66 Western cross-appeals from the denial of its posttrial motion for JNOV. As Western made clear in its posttrial motion, it believes the jury’s verdict and the trial court’s entry of

judgment for Western were correct and should not be set aside, but it wished to preserve its argument for JNOV in the alternative. Since we are affirming the trial court's judgment for the reasons stated above, we need not address Western's cross-appeal.

¶ 67

III. CONCLUSION

¶ 68

The judgment of the trial court is affirmed.

¶ 69

Affirmed.