2026 IL App (1st) 252325-U
No. 1-25-2325
Order filed November 20, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).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

ALICIA YOUNG, Special Administrator of the Estate of KEVIN ANTHONY MALONE, JR., Plaintiff-Appellee,

v.

THE UNIVERSITY OF CHICAGO MEDICAL CENTER d/b/a COMER CHILDREN'S HOSPITAL and d/b/a UNIVERSITY OF CHICAGO PHYSICIANS GROUP, a corporation, DAVID HOWES, M.D., and JULIA JEANETTE THRASH, M.D., Defendants-Appellants.

Appeal from the Circuit Court of Cook County.
Honorable Bridget A. Mitchell, Judge, Presiding.
No. 2022 L 000696

PRESIDING JUSTICE GAMRATH delivered the judgment of the court.
Justices Pucinski and C.A. Walker concurred in the judgment.

ORDER

¶ 1 *Held*: In a medical malpractice action for the death of an infant, the trial court acted within its discretion in granting a new trial based on the defense's introduction of prejudicial evidence insinuating the infant's mother was a marijuana user.

¶ 2 On February 2, 2020, two-month-old Kevin Malone Jr. was brought to the emergency room at the University of Chicago Medical Center. He was discharged three hours later and died the next day. His mother, Alicia Young, as special administrator of his estate, brought a medical malpractice action against the University of Chicago Medical Center and Dr. David Howes, alleging they fell below the standard of care by failing to recognize and treat Kevin's pneumonia and dehydration.

Defendants claimed Kevin did not have pneumonia or dehydration, and his death was an unexplained occurrence possibly caused by an unsafe sleep environment and/or exposure to marijuana smoke.

¶ 3 The jury returned a verdict for defendants. Alicia moved for a new trial, arguing the court erred in admitting speculative and prejudicial testimony that marijuana smoke could have caused Kevin's death. The court agreed and granted a new trial. We granted defendants' petition for leave to appeal (see Ill. S. Ct. Rule 306(a)(1) (eff. Oct. 1, 2020)) and now affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Kevin's Hospitalization and Death

¶ 6 On Sunday, February 2, 2020, at 8:18 a.m., Alicia brought Kevin to the pediatric emergency department of the University of Chicago Medical Center. She explained that since Friday, Kevin had been coughing and had a runny nose and congestion. On Saturday, his condition worsened to include projectile vomiting and diarrhea. He could not hold down milk from breastfeeding, but could hold down "small feeds, like dripping it from the bottle into his mouth so he could get a little bit of something." He was also not urinating normally. His diapers were only "lightly damp." On Sunday, Kevin developed a fever of 101.8°F, which led Alicia to seek emergency care.

¶ 7 Triage nurses documented that Kevin had a fever and mild tachycardia (increased heart rate). His breath sounds were clear with no signs of respiratory distress. His oxygen saturation was 96%, within normal range. The nurses gave him acetaminophen to reduce his fever.

¶ 8 Kevin was evaluated by Dr. Julia Thrash, a resident physician, and defendant Dr. David Howes, an attending physician. Howes observed that after Kevin was given acetaminophen, his temperature, heart rate, and respiratory rate normalized. He was still breathing normally with no signs of respiratory distress, and his oxygen saturation rose to 100%. He did not appear to be in

pain. While in the emergency room ("ER"), he breastfed and drank four ounces of Pedialyte without vomiting, and he made a wet diaper without diarrhea.

¶ 9 Howes diagnosed Kevin with viral enteritis, febrile illness (illness with fever), vomiting, diarrhea, and an upper respiratory infection. He did not believe Kevin had pneumonia, since "the hallmark of pneumonia is your lungs aren't working well," which would have caused increased work of breathing and decreased oxygen saturation. He also saw no signs of dehydration and no need to administer IV fluids since Kevin was able to drink while in the ER. Based on these factors, Howes discharged Kevin around 11 a.m. and prescribed Tylenol. Thrash instructed Alicia to keep Kevin hydrated by giving him small feedings of breast milk and Pedialyte every hour. She told Alicia to bring Kevin back to the ER if he displayed signs of respiratory distress, if he did not have a wet diaper for more than six to eight hours, if he did not respond to her as normal, or if he developed a fever over 104°F.

¶ 10 Kevin's father, Kevin Malone, Sr., arrived at the emergency department as Thrash was giving Alicia discharge instructions. He noticed that his son "wasn't himself." He was lethargic and still, not moving his head around or laughing, but Malone could not tell if his son was having trouble breathing.

¶ 11 Alicia stayed awake that night to watch over Kevin while he slept in his crib. At 6 a.m. the next morning, Malone left for work, and Alicia went to sleep, bringing Kevin into bed with her "so [she] could monitor him a little bit more." At 9 a.m., Kevin woke Alicia by crying. By 9:30 a.m., he had stopped crying, was not trying to eat, and "did not look like himself." Alicia decided to take him to the doctor. Around 9:45 a.m., Alicia took a photo of Kevin to send to Malone. Shortly afterwards, when Alicia picked Kevin up to dress him, he became unresponsive. Alicia called 911 and, per the operator's instructions, began performing CPR on Kevin. The ambulance arrived and

paramedics also performed CPR on him. He was transported to St. Mary's Hospital, where he was pronounced dead.

¶ 12 The autopsy and death certificate, completed by Dr. Zhou Wang, reflected that Kevin died of cardio-pulmonary arrest secondary to "bronchopneumonia involving bilateral lungs," with significant dehydration as a contributing factor.

¶ 13 B. Alicia's Witnesses

¶ 14 At trial, Alicia's experts testified that Kevin died of viral pneumonia and dehydration that defendants failed to diagnose and treat. Wang testified that in conducting Kevin's autopsy, he performed microscopic review of tissue samples from the lungs. The pulmonary alveoli had numerous lymphocytes and necrotic tissue debris, both of which indicated bronchopneumonia. Wang also found significant dehydration based on skin tenting (*i.e.*, pulling and releasing skin to observe its elasticity), as well as Kevin's history of cough, fever, and vomiting. Toxicology results showed no marijuana in Kevin's system.

¶ 15 Dr. Armando Correa, a pediatric infectious disease expert, concluded based on his review of the medical record that Kevin had viral pneumonia and dehydration when he arrived at the ER. Correa explained that pneumonia is an infection that causes inflammation of the alveoli in the lungs, leading to buildup of fluid and debris that reduces oxygen flow. Dehydration can exacerbate the problem by affecting the body's immune response. In Kevin's case, the reduced oxygen flow led to cardiac arrest that caused his death. If he had been admitted to the hospital, he likely would have survived because of the monitoring and supportive care provided there, including IV hydration and supplemental oxygen.

¶ 16 Dr. William Gibson, a specialist in emergency medicine, testified that Kevin was dehydrated when he came to the ER, based on his vomiting, diarrhea, failure to feed a normal

amount, fever, and elevated heart rate. Additionally, his weight on the growth chart was less than 10th percentile, a sizable drop from his weigh-in a month earlier at the 40th percentile. Given Kevin's presentation, the standard of care required Howes to order laboratory tests for dehydration. Although Kevin drank two to four ounces in the ER, Gibson opined it was not enough fluid to address his dehydration, and Kevin should have received IV fluids. Gibson further testified that in children of Kevin's age, viral pneumonia may not cause abnormal lung sounds or breath sounds, and it can be clinically indistinguishable from viral enteritis. Gibson opined the standard of care required Howes to order a chest X-ray, which would have revealed pneumonia.

¶ 17 Gibson further testified that Howes was professionally negligent in discharging Kevin. Infants with infections may "go from looking okay to needing CPR in a short period of time." In Kevin's case, this happened at home. If he had been in the hospital, staff could have responded instantly to the change in his vital signs, and he would likely have lived.

¶ 18 C. Defendants' Witnesses

¶ 19 Howes testified on his own behalf that he complied with the standard of care and did not observe any signs that Kevin had pneumonia or dehydration. Thrash, the resident who examined Kevin in the ER, likewise testified that she did not observe signs of pneumonia or dehydration. Kevin seemed well-nourished, alert, and active, with a strong cry. He was breathing calmly and comfortably with no crackling, wheezing, or other indications of respiratory distress. His mouth and mucous membranes were moist, consistent with adequate hydration. Thrash also found it significant that Kevin was able to breastfeed and drink Pedialyte without vomiting, and he made a wet diaper without diarrhea while in the ER. She concluded it was appropriate for Kevin to be discharged from the ER.

¶ 20 Adrienne Hammerstein, one of the responding paramedics on the day Kevin died, testified there was a "strong smell of marijuana" in Kevin's house. Based on her experience with marijuana, she believed it had been recently smoked, but she admitted she did not see smoke or any drug paraphernalia and did not know if marijuana had been smoked in the home. She smelled no marijuana on Kevin's clothes, though she did smell it on Alicia's clothes at St. Mary's Hospital.

¶ 21 None of the police officers or other EMS personnel corroborated Hammerstein's assertions. Hammerstein admitted she often smelled marijuana when no one else did, and she did not know how long it took the scent of marijuana to dissipate from a house.

¶ 22 Dr. Jeffery Seiden, the defendants' pediatric emergency-medicine physician, testified that Howes' diagnoses were correct and his decision to discharge Kevin was appropriate and within the standard of care. He found no evidence that Kevin had pneumonia or clinical dehydration in the ER, based on his absence of respiratory distress and his vital signs, appearance, and wet diapers. He stated pneumonia and dehydration are clinical diagnoses that can be made on history and physical examination alone, and the standard of care did not require a CBC, CMP, urinalysis, or chest X-ray.

¶ 23 Seiden did not know what caused Kevin's death, but in his experience, most sudden unexplained infant deaths occur when the infant is an unsafe sleep environment. He testified that many things could render an infant's sleep environment unsafe, such as sleeping on one's belly or side instead of one's back, co-sleeping with a parent, sleeping on an adult bed, the presence of blankets, pillows, or stuffed animals in the bed, or the presence of smoke, which is "heavily associated" with unexplained infant deaths. Seiden testified it was his understanding that Kevin was "exposed to marijuana smoke" before he died, and his "known history of an unsafe sleeping environment" was much more likely to have caused his death than disease.

¶ 24 Dr. Jason Harris, the defendants' pediatric infectious-disease expert, agreed with Howes' diagnoses and opined that Kevin did not die from pneumonia or dehydration. His history did not reflect signs or symptoms of pneumonia, and his clinical exam did not show hypoxia or increased breathing work. Harris stated, "Kids that die from pneumonia have respiratory distress. They're basically gasping for air. It's very obvious, and it's not subtle, and you don't have to be a doctor to be able to observe that." Also, Kevin's ER presentation was not consistent with significant dehydration. He was feeding at regular intervals, was producing wet diapers, had moist mucous membranes and no sunken fontanelle.

¶ 25 Dr. Lora Darrisaw, a forensic and pediatric pathologist, reviewed Kevin's autopsy report, autopsy photographs, photographs of microscopic slides, and medical records. She concluded that he did not die of bronchopneumonia, viral pneumonia, or any infectious lung disease. She did not see anything in the autopsy findings that would have predicted the death and would have certified the cause of death as a sudden unexplained infant death. Dr. Florette Hazard, a pediatric pathologist, also reviewed the autopsy report and did not find signs of pneumonia or any other infectious disease as the cause of death.

¶ 26 D. Posttrial Proceedings

¶ 27 After the jury returned a verdict in favor of defendants, Alicia moved for a new trial, arguing that multiple erroneous rulings on evidentiary issues deprived her of a fair trial. This gave the trial court a chance to objectively review its rulings and objectively weigh the effects of any errors.

¶ 28 The trial court thoughtfully and conscientiously determined that it erred in ruling on two issues. First, it made a "serious and prejudicial error" when it permitted Hammerstein to testify that she smelled "freshly smoked" marijuana in Kevin's home and smelled marijuana on Alicia's

clothing. The court found this testimony irrelevant, since Hammerstein smelled no marijuana on Kevin's clothes and toxicology results did not reveal marijuana in his bloodstream. Even if relevant, its probative value was substantially outweighed by the danger of unfair prejudice to Alicia. This error was compounded when Seiden relied on Hammerstein's testimony in opining that Kevin's death could have been caused by an unsafe sleeping environment combined with the presence of marijuana smoke. Finding the cumulative effect of these errors might have unfairly tipped the scale in favor of defendants, the court granted Alicia's motion for a new trial in accordance with the interests of justice.

¶ 29 II. ANALYSIS

¶ 30 Because the trial court is in the best position to assess the fairness of the trial and the effects of any errors that occurred, we will not disturb the trial court's ruling on a motion for new trial unless it clearly abused its discretion. *Winters v. Kline*, 344 Ill. App. 3d 919, 925 (2003). Evidentiary rulings are also reviewed for an abuse of discretion. *Miramar Capital, LLC v. Wells Fargo Clearing Services, LLC*, 2026 IL App (2d) 250055, ¶ 54. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Irrelevant evidence is not admissible (Ill. R. Evid. 402 (eff. Jan. 1, 2011)), and even relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice" (Ill. R. Evid. 403 (eff. Jan. 1, 2011)).

¶ 31 Here, the relevance of the defense testimony regarding marijuana was dubious at best. Hammerstein, the only responder who reported smelling marijuana, admitted she did not see any smoke or drug paraphernalia, did not know how long it took the scent of marijuana to dissipate from a home, and acknowledged that she could smell marijuana when no one else did. She also

acknowledged not knowing if marijuana was smoked in the house. Thus, Hammerstein's testimony is weak evidence of what might have transpired in Kevin's house on the morning of his death.

¶ 32 Crucially, Hammerstein did not smell any marijuana on Kevin's clothes, consistent with toxicology results that showed no marijuana in his bloodstream. Alicia was never asked whether she smoked marijuana or had it in the house. Thus, Hammerstein's uncorroborated account was the sole foundation for Seiden's opinion that exposure to "marijuana smoke" might have contributed to Kevin's death—and a shaky foundation at that, since Hammerstein saw no smoke. Moreover, Seiden admitted he did not know what caused the death, merely that smoke is "associated" with unexplained infant deaths.

¶ 33 Under these facts, the trial court reasonably found any probative value of this testimony was substantially outweighed by the risk of unfair prejudice. As this court has observed, "[t]here is substantial case law to support limiting references to alcohol or other drugs due to the potential for prejudice far outweighing any probative value." *Bruntjen v. Bethalto Pizza, LLC*, 2014 IL App (5th) 120245, ¶ 144 (collecting cases).

¶ 34 In *Bruntjen*, we found the trial court properly excluded evidence of plaintiff's past marijuana and alcohol use where no doctor testified that drugs or alcohol impacted his recovery, only that it might or could impact a patient's recovery. *Id.* ¶ 143. Here, no witness testified there was marijuana smoke in Kevin's house, let alone that it caused his death. At best, the testimony speculated that *if* there was smoke, it *could have* contributed to his death.

¶ 35 During opening argument, the defense emphasized that Alicia and Kevin were the only people in the house from 6 a.m. until the paramedics came, and "[u]pon entering the house, there [was] a strong smell of marijuana in the air," thus insinuating that Alicia was a drug user. The defense elicited consistent testimony from Alicia that she was alone with Kevin before paramedics

arrived. The potential prejudice from this insinuation was considerable, since a disputed factual issue was the care provided to Kevin in the day after he left the hospital and, most importantly, in the hours before his death. The trial court was in the best position to evaluate the effect this testimony had upon the jury and acted within its discretion in granting Alicia a new trial.

¶ 36 Defendants argue this case is analogous to *Wade v. City of Chicago Heights*, 295 Ill. App. 3d 873 (1998), in which plaintiff lost control of his car and crashed into a building. In his ensuing suit against the city, we held it was reversible error to exclude evidence that a blood alcohol test revealed his blood alcohol level was .208 on the night of the crash. *Id.* at 879, 886. We observed that evidence of alcohol consumption "is so prejudicial that more than mere drinking must be shown; actual intoxication must be established." *Id.* at 885. Plaintiff's .208 test result was highly probative of intoxication. *Id.* at 886. In contrast, the marijuana evidence here carried the same potential for prejudice but none of the corresponding probative value. Without toxicological evidence or other competent proof, the evidence served only to encourage the jury to speculate that Alicia's use of marijuana might have contributed to Kevin's death.

¶ 37 Defendants' reliance on *Arient v. Alhaj-Hussein*, 2017 IL App (1st) 162369, is likewise unavailing. Arient had chronic abdominal pain. Due to her history of smoking, her physician recommended a celiac plexus block, which led to her paralysis and death. Under these facts, the trial court erred by barring evidence of her smoking, which was directly relevant to the standard of care. *Id.* ¶¶ 38-39. *Arient* is distinguishable because her history of smoking was well-documented and highly probative, unlike here, where defendants sought to introduce an uncorroborated report of the scent of marijuana in Kevin's home. Marijuana also may have carried a greater stigma than tobacco at the time because it was only decriminalized a month before

Kevin's death. 410 ILCS 705/10-5 (West 2024) (allowing personal use of cannabis as of January 1, 2020).

¶ 38 Defendants nevertheless argue a new trial was inappropriate under the general verdict rule, also known as the two-issue rule, which provides:

> "[A] general verdict for the plaintiffs or the defendants without special interrogatories will not be disturbed if the case involved two or more determinative issues, or two or more theories were presented, and there was sufficient evidence to support at least one of the issues or theories that was free from prejudicial error. [Citations.] In other words, where multiple claims, theories, or defenses were raised, a general verdict creates a presumption that the jury found in favor of the victorious party on every claim, theory, or defense raised." *Perez v. St. Alexius Medical Center*, 2022 IL App (1st) 181887, ¶ 64.

¶ 39 Defendants argue this rule applies because they advanced three independent theories of defense: (1) the emergency department met the standard of care, (2) Kevin did not die of pneumonia or dehydration, and (3) Kevin instead died due to marijuana exposure. According to defendants, even if the evidence relating to the third theory was unfairly prejudicial, the jury could have based its verdict on either of the other two theories, both of which were unaffected by the improper testimony.

¶ 40 We disagree. Far from being an independent theory, defendants' allegations regarding marijuana usage provided potentially decisive support for all their defenses. See *Watson v. Mead Johnson & Co., LLC*, 2026 IL App (5th) 240936, ¶ 121 (general verdict rule did not apply where plaintiff's negligence claim materially overlapped with her design defect and failure-to-warn claims). Presented with the defense's theory that there was no medical basis to admit Kevin to the hospital or provide further treatment, a finder of fact might ask: if Kevin's condition warranted

discharge, why did he die the very next day? Likewise, if Kevin did not die of pneumonia or dehydration, what caused his death?

¶ 41 Conversely, the defense's insinuation that Alicia was a drug user who was smoking "very recently" before Hammerstein's arrival, bears directly on and bolsters both theories of defense. If the jury believed Seiden's speculative theory that Kevin died of marijuana smoke inhalation, despite no one testifying to the presence of smoke in the house, that would mean Kevin did not die of pneumonia or dehydration, nor was it necessary to conduct further testing or admit him to the hospital for these conditions.

¶ 42 Since this allegation was inextricably intertwined with defendants' other theories, the prejudice from its introduction infected the entire trial. Defendants' cases involving independent theories of recovery or defense are therefore inapposite. See *Wright-Young v. Chicago State University*, 2019 IL App (1st) 181073, ¶ 2 (affirming verdict for plaintiff under general verdict rule where most of plaintiff's claims were barred by absolute immunity, but one was not); *Witherell v. Weimer*, 118 Ill. 2d 321, 329 (1987) (where there was sufficient evidence to sustain verdict on a theory of estoppel, court was not required to address appellee's argument regarding alternative theory); *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 492 (2002) (where plaintiffs advanced several theories of negligence, defendants' challenge to the sufficiency of the evidence regarding one theory did not warrant reversal). Under our facts, there were no "theories that [were] free from prejudicial error" (*Perez*, 2022 IL App (1st) 181887, ¶ 64), and the general verdict rule does not render the trial court's decision to grant a new trial an abuse of discretion.

¶ 43 III. CONCLUSION

¶ 44 The granting of a motion for a new trial is neither taken lightly nor typically common in a complex case such as this. However, when the trial court deems it necessary to correct an error

made during trial because such an error deprived a party of a fair trial, the court is well within its discretion to do so. For the foregoing reasons, we affirm the trial court's grant of a new trial.

¶ 45 Affirmed.