No. 126577

IN THE SUPREME COURT OF ILLINOIS

JANE DOE, Plaintiff/Appellant, vs. **BEAU PARRILLO,** Defendant/Appellee.	On Leave to Appeal from the Illinois Appellate Court, First Judicial District, No. 1-19-1286 There Heard on Appeal from the Circuit Court of Cook County, Illinois County Department, Law Division Case No. 2016 L 012247 The Honorable James M. Varga, Judge Presiding

BRIEF AND APPENDIX OF DEFENDANT/APPELLEE BEAU PARRILLO

CROSS -RELIEF REQUESTED

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ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION

On January 13, 2019, Defendant-Appellee, Beau Parrillo's (the "defendant"), attorney, Allison Muth ("Muth"), filed an emergency motion before the Presiding Judge of Law Division to continue the trial of the case at bar which was scheduled to be assigned to a trial judge the next day. Before the emergency motion was heard, the case was assigned for trial to the Honorable Judge James M. Varga ("Judge Varga"). Muth presented her motion to Judge Varga for ruling but he refused to hear or rule on the motion saying he had no authority to do so. Subsequently, while Muth was attempting to obtain a ruling on the continuance motion from the Presiding Judge, Judge Varga empaneled a jury without any questioning by the plaintiff's attorneys and conducted a trial in the absence of the defendant and his attorney. The plaintiff was the sole trial witness who testified in support of her five-count complaint alleging assault, battery and sexual assault. A court reporter was not present for any portion of the proceedings. After receiving instructions from the court, several of which were improper, the jury returned a verdict in favor of the plaintiff in the amount of $1 million for compensatory damages and $8 million in punitive damages. Prior to the jury declaring its verdict, the court denied the defendant's motion for a mistrial, and, upon the jury rendering its verdict, entered judgment on the verdict as aforesaid. Thereafter the defendant filed a post-trial motion requesting the judgment be vacated and new trial ordered which the trial court denied. An appeal was timely filed and briefed and the Appellate Court issued its opinion on September 28, 2020, affirming the judgment in part and reversing in part. The Appellate Court affirmed the judgment for compensatory damages in the amount of $1 million dollars and reversed the judgment for punitive damages reducing the punitive

damages from $8 million dollars to $1 million dollars.

ISSUES PRESENTED FOR REVIEW REGARDING THE DEFENDANT'S RESPONSE TO THE PLAINTIFF'S BRIEF REGARDING THE APPELLATE COURT'S REDUCTION OF PUNITIVE DAMAGES

Whether the reduction of the punitive damages award by the appellate court was proper after it found the amount of the award was constitutionally excessive.

ISSUES PRESENTED FOR REVIEW ON DEFENDANT'S REQUEST FOR CROSS-RELIEF

Whether the trial court abused its discretion in not ruling on and granting the defendant's emergency motion for a continuance of the trial, or, alternatively, in denying the defendant sufficient time to obtain a ruling on the emergency motion for a continuance of the trial by the Law Division's Presiding Judge or his designee;

Whether the trial court abused its discretion in conducting a jury trial in the absence of the defendant and the defendant's attorney thereby denying the defendant his substantive and procedural due process rights;

Whether the trial court committed reversible error by not including the defense attorneys in the instruction conference, and committed reversible error by tendering improper instructions to the jury;

Whether the trial court committed reversible error in improperly admitting medical records into evidence during the trial;

Whether the trial court committed reversible error in failing to protect the due process rights of the defendant and the integrity of the judicial process;

Whether the compensatory and punitive damages set by the jury were excessive;

Whether the trial court committed reversible error in denying defendant's motion for mistrial.

STATEMENT OF JURISDICTION

On September 28, 2020, the Appellate Court reversed the judgment in part and affirmed in part. The Appellate Court affirmed the judgment for compensatory damages in the amount of $1 million dollars and reversed the judgment for punitive damages reducing the punitive damages from $8 million dollars to $1 million dollars. Thereafter the plaintiff filed a Petition for Leave to Appeal to the Supreme Court which was granted on January 27, 2021. This Court has jurisdiction pursuant to Illinois Supreme Court Rule 315.

STATEMENT OF FACTS

The Statement of Facts in plaintiff's brief (Pl.'s Br., p. 4-7) is woefully inadequate as well as argumentative in violation of Illinois Supreme Court Rule 341(h)(6). Further, portions of the plaintiff's arguments are based upon evidence that does not exist. Specifically, plaintiff relies heavily on text messages she claims were sent to her by defendant that threaten, "in writing, to kill Doe at some point in the future" and that she would be "looking over her shoulder for the rest of her life for her killer." (Pl. Br., p. 6). However, nowhere in the text messages that plaintiff refers to does the defendant make any such threat or use the terms "murder" or "kill." (R C838-843).

The plaintiff filed a complaint against defendant seeking damages for personal injury arising from alleged physical and sexual assaults. (R C23-28). Defendant denied all allegations in his answer. (R C91-97). Plaintiff filed her First Amended Complaint ("FAC") to include a prayer for punitive damages. (R C165-170). Defendant answered the FAC

denying all allegations, and filed affirmative defenses of consent, self-defense and provocation. (R C181-189). On January 7, 2019, the parties' attorneys answered ready and the case was set for trial assignment on January 14, 2019. (R C332).

On January 13, 2019, Muth filed an emergency motion for continuance of the trial based upon her mother's severe deteriorating health due to chronic obstructive pulmonary disease and respiratory failure. During the week of January 14th, Muth was the only trained caregiver available to assist her mother in breathing. Muth noticed her motion for the 11:00 a.m. emergency motion call on January 14th before the Presiding Judge. Assignments of cases for trial are made in the Presiding Judge's Courtroom at 10:00 a.m., and emergency motions are heard at 11:00 a.m. in the same courtroom. (R C526, ¶¶ 5, 7; R 96, L6-9; C535; C332; J. Flannery Standing Order, App. p. A-26).

At the 10:00 a.m. trial assignment call on January 14th, the case was assigned to Judge Varga. (R C15). Attorney Robert Holstein ("Holstein"), who, on January 12th , agreed to assist Muth with the procedural aspects of the trial, was present but did not appear before the Assignment Judge because he did not know if his appearance was on file. (R C882-883, ¶¶4, 5). When Muth arrived at 10:15 a.m. to present her emergency motion at the 11:00 call, she was told the case was before Judge Varga and to present her continuance motion to him for ruling. (R C526-527, ¶7).

Muth presented the motion to Judge Varga and also advised him that while she was enroute to court that morning, she learned from the defendant that his father was unexpectedly diagnosed as critically ill in Florida, and he intended to go to Florida to be with his father. (R 111, L16-18; C526-527, ¶¶7-8; C 544-545, ¶¶5-8). Judge Varga refused to hear

or rule on the motion due to his belief that only the Presiding Judge had the authority to rule on motions to continue a trial. Judge Varga then went to discuss the matter with the Presiding Judge, but could not recall whether he spoke to him. Muth and Holstein recall Judge Varga advising them he was unable to locate the Presiding Judge. Upon his return, Judge Varga informed Muth the emergency motion was not on file, and recessed until 1:30 p.m. to allow Muth time to ascertain the status of the motion. (R 106, L22-24; R 107, L14-21; R 111, L17; R 42, L20-24; R 43, L8-9, 11-12; C527, ¶¶8, 9).

Muth and Holstein went to the clerk's office and learned the motion and Holstein's appearance were rejected because Muth inadvertently checked a box entitled "confidential" during the e-filing process. (R 121, L11-12; C527-528, ¶10). Muth amended her motion by adding the information regarding defendant's father and e-filed it. (R C339-341). Thereafter, Muth tried to obtain a ruling from the Presiding Judge, however the courtroom was closed with no staff present. (R C528, ¶ 11).

At 1:30 p.m., Muth presented the amended motion to Judge Varga for ruling. (R C 528, ¶12), who again refused to hear or rule on it for the same reason. (R 106, L22-24). Judge Varga asked Muth to contact the defendant to discuss settlement, which she did but, due to his father's medical condition, the defendant was not in the proper state of mind to make any decisions regarding settlement. (R C528, ¶12). Plaintiff's attorney then made an oral Supreme Court Rule 237 motion for default based the defendant's absence. In opposing the oral motion, Muth renewed her request to, at minimum, hold the case for a few days to allow Muth and defendant to ascertain the status of their respective parents' health. Judge Varga denied plaintiff's motion without prejudice. At 3:00 p.m., Judge Varga continued the case

to January 15th at 9:30 a.m. to allow Muth time to present her motion at the Presiding Judge's 11:00 a.m. emergency motion call. (R 66, L12-14; R 7, L18-20; C528-529, ¶13).

Judge Varga and Muth hold divergent opinions as to the agreed upon plan for January 15th. Judge Varga said the agreement was to begin jury selection at 9:30 a.m. and to break at 11:00 a.m. to permit Muth to present her motion for a continuance to the Presiding Judge. Muth contends she agreed to be present in court at 9:30 a.m., but that the agreement was to allow her to present her motion prior to engaging in jury selection. Muth explained she would not have agreed to begin jury selection without defendant being present and prior to obtaining an order for a continuance. (R 129, L18-22; R131, L5-10; R 132, L16-18, 22-24).

At approximately 8:00 a.m. on January 15th, Muth's mother required emergency assistance due to low oxygen levels and shortness of breath. (R C536-537, ¶¶ 11-13). While assisting her mother, Muth called Holstein to request he advise the Court she would be late, but Holstein did not answer his phone. At 9:39 a.m. plaintiff's counsel left Muth a voicemail advising her that jury selection had begun without her or her client. At 10:15 a.m. Muth returned plaintiff's counsel's phone call, but no one answered. Muth said she called the courtroom to explain her absence but the phone just rang, without allowing her to leave a message. Muth also attempted to contact the Office of the Cook County Clerk, but only reached the automated system. At the June 5th hearing, Judge Varga stated he and his clerk were unaware of any phone call from Muth on the morning of January 15th, but could not refute the call was made. (R C529, ¶14; R 101, L10-11, 17-20; R 100, L20-22).

At approximately 10:00 a.m. on January 15th, Holstein observed the venire assembled in the hallway outside Judge Varga's courtroom. (R C885, ¶20). In response to Judge Varga's

inquiry as to Muth's whereabouts, Holstein said he had not spoken to her but knew she would be presenting her motion to the Presiding Judge at the 11:00 motion call. (R C885, ¶20). Judge Varga next inquired whether Holstein was going to step in to participate in the trial on behalf of the defendant. (R 8, L16). Holstein declined and advised Judge Varga that he had never met or spoken to defendant, had only been asked on January 12, 2019 to assist with procedural issues at trial, was unfamiliar with the facts of the case, and was concerned his participation would jeopardize defendant's pending motion for a continuance. (R 149, L8-9; C885, ¶22). Despite being unaware of the disposition of defendant's continuance motion, or the circumstances preventing Muth from being present, Judge Varga ordered the trial to proceed in the absence of the defendant and his counsel. (R C884, ¶¶20-21).

Due to her mother's serious medical condition on the morning of January 15th, Muth was unable to arrive in courtroom 2005 until 11:30 a.m. Upon her arrival, the clerk informed Muth it was too late for the motion to be heard and she should present the motion to Judge Varga. Muth requested the clerk to ask the Presiding Judge whether he would hear the motion. The clerk did so and advised Muth that the Presiding Judge directed her to present the motion the next day at 11:00 a.m. In search of assistance, Muth went to the office of Chief Judge Timothy Evans. Judge Evans' clerk attempted to reach Judge Evans but could not, and advised her to return to Judge Varga. (R C530-531, ¶18; R 138, L6-7).

When Muth arrived at Judge Varga's courtroom, she observed the plaintiff was on the stand testifying. Under these circumstances, Muth's only option was to present a motion for mistrial. (R 104, L18-20; C531, ¶¶19, 20).

No record exists to demonstrate the instructions were read to the jury before deliberation. The fact Judge Varga and plaintiff's counsel were finalizing the instructions suggests the instructions were not read to the jury. *See* Illinois Supreme Court Rule 239(e). (R 147, L14-23; R 148, L2-4). After the exhibits and jury instructions were delivered to the jury room, Judge Varga permitted Muth and Holstein to approach the bench. While the jury was deliberating, Muth presented her motion for mistrial. Muth argued Judge Varga was aware of Muth's mother's precarious medical condition and that Muth would not be able to participate at trial that week as she was the only available caretaker. Muth added the defendant had a right to be present for his own trial and that his testimony was necessary to present his meritorious defenses to plaintiff's allegations. Judge Varga denied defendant's motion for mistrial on the ground that only the Presiding Judge could rule on her motion for a continuance of the trial, stating "Procedure is procedure, motion is denied." (R 148, L2-4; R 104, L18-21; C531-532, ¶ 22; R 20, L6-7).

If defendant were permitted to testify at his trial, he would have testified, consistent with his discovery deposition, that he never physically or sexually assaulted plaintiff at any time. Defendant would also have testified to facts which supported his affirmative defenses. (R C181-186; C532, ¶23; R C187-189; R C787-788, ¶7).

During the trial, the only testimony heard by the jury was from the plaintiff. (R C894, ¶1). No court reporter was present at any stage of the proceedings/trial. (R 204, L9-10; R 6, L4-7). The jury deliberated for one hour and returned with a verdict in favor of the plaintiff in the amount of $9 million ($1 million compensatory and $8 million punitive). (R C418).

Defendant filed a motion to obtain access to Judge Varga's notes taken during trial as well as the jury cards so the jurors could be interviewed regarding the plaintiff's testimony, rulings during trial, and closing arguments. (R C472-473). Defendant also filed a motion to compel plaintiff to identify and provide copies of the exhibits received into evidence. (R C481-483). Judge Varga granted the motion to compel trial exhibits, but denied defendant's motion for the Judge's notes and jury cards. (R C487). On March 13, 2019, defendant filed his post-trial motion to vacate the judgment and to grant a new trial. (R C 489-707). Defendant's post-trial motion was denied orally on June 5, 2019. (R 206, L16). On June 6, 2019, Judge Varga filed a written order denying the defendant's post-trial motion. (R C890-895). On June 21, 2019, defendant filed a timely Notice of Appeal and this appeal followed. (R C906-920).

DEFENDANT'S RESPONSE TO PLAINTIFF'S BRIEF

STANDARD OF REVIEW

The plaintiff's assertion, unsupported by any authority, that the standard of review regarding the appellate court's finding the amount of punitive damages awarded was excessive and in violation of due process is "clearly erroneous" is wrong. Constitutional challenges of punitive damages awards are reviewed under a *de novo* standard. *Franz v Calaco Development Corp.*, 352 Ill. App. 3d 1129, 1147 (2d Dist. 2004)(citing *Cooper Indus. v. Leatherman Tool Group,* 532 U.S. 424, 436 (2001). *See also*: *Cooper*, 532 U.S. at 436, quoting *Ornelas v. United States*, 517 U.S. 690, 696-98, (1996) ("Concepts of this nature acquire "'content only through application'" and are best controlled and clarified through independent review. *De novo* review, under such circumstances, serves to "'unify

precedent'" and "'stabilize the law'.") Finally, the *Cooper* Court explained that *de novo* review is beneficial because it provides citizens notice of conduct that will result in punishment and serves to assure the uniform treatment of individuals engaged in similar conduct:

> "'Requiring the application of law, rather than a decision-maker's caprice, does more than simply provide citizens notice of what actions may subject them to punishment; it also helps to assure the uniform general treatment of similarly situated persons that is the essence of law itself.'" *Cooper*, 532 U.S. at 436, 149 L. Ed. 2d at 687, 121 S. Ct. at 1685, quoting *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 587. See also *Hazelwood v. Ill. Cent. Gulf R.R*, 114 Ill. App. 3d 703,710 (4th Dist.1983)

In *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003), the Supreme Court reiterated some of the principles set forth in *Cooper* and stated that *de novo* review was "mandated" when considering whether a punitive damage award was unconstitutionally excessive.

ARGUMENT

A. Jury's Finding that Defendant Acted Willfully or Maliciously is Against the Manifest Weight of the Evidence

A jury's factual finding that a defendant acted willfully or maliciously is reviewed under a manifest-weight standard. *Franz v. Calaco Dev. Corp.*, 352 Ill.App.3d 1129, 1138 (2d Dist. 2004). Under the manifest weight standard, a factual finding will be overturned "when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary or not based on the evidence." *Goldberg v. Astor Plaza Condo. Ass'n*, 2012 IL App (1st) 110620, ¶60. The manifest-weight standard exists because "the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony." *Id.*

The Court's decision not to continue the trial or allow defendant and defense counsel to participate resulted in the jury being prevented from observing witnesses' demeanors when being subjected to cross-examination, weighing the credibility of witnesses, hearing the defendant's and his witnesses' evidence of a meritorious defense, and resolving conflicts in the witnesses' testimony. Such a one-sided, non-adversarial trial produced the finding by the jury that defendant acted willfully or maliciously based only upon plaintiff's unchallenged, non-cross examined, self-serving testimony. As the manner in which this trial was conducted amounted to nothing more than a prove-up, resulting in an unconscionable $8 million in punitive damages, the jury's factual finding should be set aside and new trial be ordered.

B. The Punitive Damage Award is Excessive and Violated Due Process

Constitutional challenges of punitive damages awards are reviewed under a *de novo* standard. *Franz*, 352 Ill. App. 3d at 1147 (citing *Cooper Indus. v. Leatherman Tool Group,* 532 U.S. 424, 436 (2001)). A constitutional challenge to the excessiveness of a punitive damages award requires the court to consider: "(1) the degree of reprehensibility of defendant's misconduct; (2) the disparity between the harm suffered by plaintiff and the punitive damages award; and (3) the difference between the punitive damages award by the jury and the civil penalties authorized or imposed in comparable cases." *Id.*

First, the evidence presented pertaining to the reprehensibility of the defendant's conduct is impossible to adequately consider given the absence of a trial record and defendant's and defense counsel's inability to attend trial and subject the plaintiff to cross-examination, introduce evidence in favor of the defendant, and have the jury consider the defendant's and his witnesses' testimony. Additionally, defendant's affirmative defenses of

self-defense, consent and provocation indicate his conduct was not reprehensible as alleged by the plaintiff. Second, a disparity clearly exists between the award and the harm suffered by plaintiff. The only evidence of plaintiff's physical and emotional injuries was plaintiff's unchallenged, self-serving testimony and a medical record demonstrating a minor facial injury. Lastly, defendant's alleged conduct would have violated criminal code provisions for Domestic Battery, 720 ILCS 5/12-3.2, and Criminal Sexual Assault, 720 ILCS 5/11-1.20. A first-time violation of the Domestic Battery statute is punishable by a fine not to exceed $2,500 for each offense. *See* 730 ILCS 5/5-4.5-55(e). A violation of the Criminal Sexual Assault statute is punishable by a fine not to exceed $25,000 for each offense. *See* 730 ILCS 5/5-4.5-30(e). If defendant had been tried criminally, the maximum fine that could have been assessed based on plaintiff's complaint is $35,000. The punitive damage award of $8 million is two hundred twenty-eight (228) times this maximum fine, demonstrating that the award is constitutionally excessive.

To determine whether a punitive damages award is so excessive as to violate the right to due process, courts typically focus on the ratio between compensatory and punitive damages. *See State Farm*, 538 U.S. at 425.

Here, the punitive damages award was eight times the compensatory damages award. When considered in light of the fact that the compensatory award was excessive, discussed *infra* at pages 58 to 66, clearly the actual ratio is exponentially higher. In similar cases, including those involving sexual assault, such outsized punitive damages awards have been set aside or subject to remittitur. *See, e.g.*, *Fall v. Ind. Univ. Bd. of Trustees*, 33 F. Supp. 2d 729 (N.D. Ind. 1998) (punitive damages of $800,000 in sexual assault case where

compensatory damages were $5,157). Based upon the documentary evidence in the record, plaintiff received medical treatment only once for her alleged injuries. Certainly, plaintiff's medical expenses are equal to or less than the compensatory damage award in *Fall*, yet her punitive damages award is significantly greater.

Punitive damages are more akin to criminal sanctions, and are described as "quasi-criminal." *Franz*, 352 Ill. App. 3d at 1141-42. A punitive damage award of this amount is clearly a punishment. Given the circumstances of this case, a punishment of this amount, without any consideration of a defense or effort to fairly evaluate the amount of plaintiff's actual damages, undoubtedly constitutes a violation of the defendant's due process rights.

Under Illinois common law, a punitive damages award is excessive if it results from prejudice or passion, or is so large as to "shock the judicial conscience." *Franz*, 352 Ill. App. 3d at 1140. Considering both the size of the punitive damages award and the fact the court declined to continue this trial to permit defendant and his counsel to participate and present evidence, the award is certainly the result of "prejudice or passion" on the part of the jury and shocked the judicial conscience of the appellate court. The punitive damage award is clearly constitutionally excessive and violative of defendant's due process rights.

A portion of the plaintiff's argument relies on non-existent evidence. In her brief, the plaintiff says a text message from the defendant to her was introduced into evidence and presented to the jury, "threatening to kill her (and that she would be looking over her shoulder for the rest of her life for her killer) if she did not stay with Parrillo." (Pl. Br. p. 6). On page 14 of her brief she writes a text message from the defendant to her "threatened to

one day murder Doe if she left him and did not continue to succumb to his treatment of her."(Pl. Br. p. 14). Text messages were introduced into evidence (R C838-843), but in none of them does defendant threaten to kill Doe.

The plaintiff begins the argument in her brief by referring to Supreme Court decisions that are 100 years old and older, which certainly do not incorporate the reasoning of current decisions by this Court and the U.S. Supreme Court. (Pl. Br., p. 8). Also on page 8 of her brief, the plaintiff relies on three decisions of this Court to support her argument the Appellate Court had no authority to reduce the punitive award in the case at bar. However, all three cases upon which plaintiff takes comfort reversed the punitive damages award. Next, the plaintiff quotes a passage from Oliver Wendel Holmes book, The Common Law, (Oliver Wendell Holmes, Jr., The Common Law, McMillian Press (1881)) which Holmes wrote 139 years ago and 21 years before he became an Associate Justice of the Supreme Court. *(Oliver Wendell Holmes, Jr.,* Wikipedia, en.wikipedia.org /wiki /Oliver_Wendell_ Holmes_Jr.). The decisions of the U.S. Supreme Court and this Court discussed below do not incorporate Holmes's revenge factor as an element for consideration regarding punitive damages.

Plaintiff claims the Appellate Court ignored well-settled decisions of this Court that a reviewing court may not disturb an "award of punitive damages on grounds that the amount is excessive unless it is apparent that the award is the result of passion, partiality or corruption." *Deal v. Byford*, 127 Ill. 2d 192, 204 (1989). (Pl.'s Br., p. 9). However, the *Deal* Court also emphasized that each case is to be judged by its particular facts and

circumstances. *Id.* This Court has also ruled that "...punitive damages are not favored in the law and courts must take caution to see that punitive damages are not improperly or unwisely awarded." *Kelsay v. Motorola, Inc.*, 74 Ill.2d 172, 188 (1978), and must be overturned if the award "shock(s) the judicial conscience." *Franz*, 352 Ill.App.3d at 1140. The *Deal* court said:

> "It is vital that each case be carefully assessed in light of the specific facts involved, and the ultimate determination should be governed by the circumstances of each particular case. Moreover, the underlying purposes of an award of punitive damages must be satisfied." *Deal* 127 Ill. 2d at 204.

In the case at bar, the Appellate Court wrote:

> "Parrillo also argues the $8 million punitive damages awarded was excessive under the federal due process standard. Punitive damages are appropriate when a tort is committed with 'fraud, actual malice, deliberate violence and oppression, or when the defendant acts willfully, or with such gross negligence as to indicate a wanton disregard for the rights of others.' *Doe v. Catholic Bishop of Chicago,*2017 IL App (1st) 162388 ¶ 9 (quoting *Kelsay v. Motorola, Inc*, 74 Ill.2d 172, 186 (1978)). A reviewing court may reduce the amount of punitive damages when it is clearly excessive. *Hough v. Mooningham*, 139 Ill.App.3d 1018, 1024 (1986). An award of punitive damages becomes excessive when it is so large that it no longer serves the purposes of acting as retribution against the defendant and a deterrent against the defendant and others. *Hazelwood v. Illinois Central Gulf R.R.,* 114 Ill.App.3d 703, 711 (1983)." (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-103, ¶76).

> "The due process clause of the fourteenth amendment prohibits a grossly excessive or arbitrary punishment on a tortfeasor, as the award would serve no legitimate purpose and constitute arbitrary deprivation of property. *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 416-17 (2003). The United States Supreme Court developed these guideposts to determine whether a jury's award of punitive damages comports with due process: (i) the degree of reprehensibility of the conduct, (ii) the disparity between the harm or potential harm suffered by the plaintiff and the amount of punitive damages awarded, and (iii) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75 (1996). We apply a *de novo* standard of review to those factors to ensure the punitive damages award turns on the ''application of law, rather than a decisionmaker's caprice.'' *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.,*

> 532 U.S. 424, 436 (2001) (quoting *Gore* 517 U.S. at 587 (Breyer, J., concurring, joined by O'Connor and Souter, JJ.)" (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-103, ¶77).

The Appellate Court reviewed all the above-referenced factors and concluded:

> "In *Blount*, the court stated, an award of four times the amount of compensatory damages falls close to that line. *Blount*, 395 Ill.App.3d at 26. The jury's award of twice that amount steps over that line. Without in any way diminishing the harm Doe suffered at Parrillo's hands, a punitive damages award of $1 million satisfies due process while also sending a strong message to Parrillo and others that this conduct is reprehensible and condemned in the strongest terms. So, we reverse the $8 million punitive damages awarded and reduce to $1 million, for a total of $2 million in damages. *Lowe Excavating Co v. International Union of Operating Engineers Local No. 150,* 358 Ill.App.3d 1034,1045 (2005) (reducing punitive damages award from $ 525,000 to $325,000), *rev'd on other ground by Lowe,* 325 Ill.2d 490-91)" (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-105, ¶84).

The Appellate Court's ruling demonstrates the Court was fully aware of U.S. Supreme Court and Illinois Supreme Court precedent governing punitive damages and followed those precedents *in making a finding* that, under the facts of this case, eight times the substantial compensatory award violated due process. The decision specifically references, among others, the decisions in *International Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 487 (2006); *BMW of North America v. Gore*, 517 U.S. 559 (1996); and *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003), all of which are leading decisions on this issue and the decisions upon which the plaintiff relies in her brief.

In the instant case, a jury trial was conducted in the absence of the defendant and his defense attorney. The exclusion ordered by the trial court prevented the jury from hearing evidence which the defendant would have produced in his defense, i.e., the photographs the plaintiff produced of her injuries were fake and doctored, and the defendant's and his

witnesses' testimony denying the allegations of wrongdoing as set forth in his answer and affirmative defenses. Defendant's attorney was not present and was not allowed to participate in the trial. As a result, the plaintiff, the only witness presented to the jury, was not subject to cross-examination. In addition, the jury was instructed with improper instructions which constituted reversible error. For these reasons alone, this case should be reversed and remanded for a new trial, but in the absence of this Court reversing and remanding this case, the above circumstances certainly support the Appellate Court's reduction of the punitive damage award.

In requesting the jury's punitive damage award be reinstated, the plaintiff relies heavily on this Court's declaration in *Deal* that no requirement exists that punitive damages imposed on a defendant bear any particular proportion to the plaintiff's compensatory recovery, 127 Ill. 2d at 204, and the fact this Court approved a ratio of 11-1 in *International Union of Operating Engineers, Local 150 v. Lowe Excavating Co,*, 225 Ill. 2d 456, 490-91 (2006). But the facts of *Deal* and *Lowe* are much different than the case at bar and thus required a different result. At a minimum, in those cases the defendant and his counsel were present and participated in the proceedings.

In *State Farm*, the Court said no rigid benchmarks exist for the ratio between compensatory and punitive damages. However, and importantly, the Court expressly stated that "when compensatory damages are substantial" a ratio "perhaps only equal to compensatory damages" would represent the outer limits for constitutionality. *State Farm*, 538 U.S. at 425. See also: *Exxon Shipping Co. v Baker*, 554 U.S. 471, 513 (2008). Justice Souter wrote, "The real problem is the stark unpredictability of punitive awards." *Id.* at 497.

The *State Farm* Court ruled:

> "Nonetheless, because there are no rigid benchmarks that a punitive damages award may not surpass ratios greater than those we have previously upheld may comport with due process where "a particularly egregious act has resulted in only a small amount of economic damages. *** The converse is also true, however. When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee. The precise award in any case, of course, must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *State Farm*, 538 U.S. at 425-26.

No one can realistically argue that the $1 million dollars compensatory award in this case is not "substantial." See defendant's argument regarding compensatory damages in this brief, *infra* at pages 58 to 66.

In *Deal*, the compensatory award was $1,275 and the punitive award was $25,000. *Deal*, 127 Ill. 2d at 193. In *Lowe*, the compensatory award was $4,680 and punitive awarded was $525,000 reduced by the trial court to $325,000. *Lowe*, 225 Ill. 2d at 458.

In *Honda Motor Co. v Oberg*, 512 U.S. 415, 424 (1994), the Court recognized that while deference is ordinarily afforded a jury verdict, "juries sometimes award damages so high as to require correction." See also: Andrew W. Marrero, *Punitive Damages: Why the Monster Thrives*,105, No. 4, Geo. L. J., (2017), "How can the doctrine's continued existence in its traditional form be justified in light of the disturbing record of fundamentally inequitable and even arbitrary judgments punitive damages awards produce?" *Id.* at 770. "As the Supreme Court recognized, punitive damages awards 'serve the same purposes as criminal penalties' (*State Farm*, 538 U.S. 408, 409, 417). *Id.* at 773. " Largely for this reason, punitive damages present an acutely troubling constitutional issue: the infliction of punishment through private litigation and judicial proceedings that lack the standards that

are constitutionally guaranteed in criminal prosecutions as checks against the exercise of the state's coercive power to impose punishment." *Id.*

In *State Farm*, the Court recognized the likelihood that compensatory and punitive damages unfairly overlap causing duplicative amounts to be included in both and noting compensatory damages already contain the punitive element. *State Farm*, 538 U.S. at 426.

The Supreme Court has referred to punitive damage awards as "windfalls,"*City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 270-71 (1981), to which a plaintiff is not entitled. See: *Spaur v. Owens-Corning Fiberglass Corp*, 510 N.W.2d 854 (Iowa 1994).

The judiciary's reliance on post-trial judicial review is flawed in that it focuses on the amount of the award as opposed to how the award was determined. See: Justice O'Connor's dissent in *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 63 (1991), "The common-law (punitive damages) scheme yields unfair and inconsistent results 'in so many instances that it should be held violative of due process in every case.'" (quoting *Burnham v. Super. Ct. of Cal., Marin County* , 495 U.S. 604, 628 (1990)).

While courts of review apply factors to determine if the punitive damage award is appropriate, the jury is not instructed with these factors which amounts to standardless discretion. See: *Haslip*, 499 U.S. at 48-51 (dissenting opinion).

In the instant case the jury was instructed regarding punitive damages by telling them they could award punitive damages (R C 678) and giving them a formula set out in the instruction. See: Instructions at R.C. 681, App. p. A-64. Unquestionably, however, the jury could not properly and adequately consider the propositions advanced in the instruction when all they heard was the testimony of the plaintiff and nothing from the defense.

The plaintiff argues the Appellate Court's reduction in the case at bar does not comport with *Blount*, but an analysis of the case reveals it does. *Blount* involved a retaliatory discharge claim against his employer. Following a trial, the jury awarded Blount $257,350 for back pay, $25,000 for physical and emotional pain and suffering, and $2.8 million in punitive damages. The trial court also awarded Blount $1,182,832.10 in attorney fees and costs. The *Blount* court carefully reviewed and discussed U.S. Supreme Court and this Court's precedent regarding punitive damages. Next, the *Blount* court, based on case law it identified, concluded the attorney fees and costs awarded were to be considered compensatory damages. This was important to the *Blount* court because, if those fees and costs were not compensatory, the ratio between compensatory damages and punitive damages would be 10-1 which the court implied was constitutionally excessive. *Blount,* 395 Ill.App.3d at 26-27. When the fees and costs were included as compensation, the ratio between compensatory and punitive damages became 1.8 to 1 which the court determined did not violate due process and comported with *State Farm*, Id. at 425, in that "...when compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *Blount,* 395 Ill. App. 3d at 29.

The bottom line in this case is the defendant was denied due process when the trial court allowed a jury trial to inappropriately proceed in his and his defense counsel's absence. The jury only heard the testimony of the plaintiff, and was denied the defendant's and his witnesses' testimony refuting liability and other evidence in support of the defendant's defense, i.e, photos which were fraudulently doctored, texts which the plaintiff has intentionally mischaracterized, and inadmissible medical reports. In addition, the jury was

instructed with instructions that were clearly erroneous and prejudicial. All of these due process violations, evidentiary issues, and instructions which in and of themselves, constituted reversible error, resulted in a unconstitutionally excessive punitive damages award.

Even if this Court determines that the cause need not be reversed and remanded for all the reasons stated in the defendant's request for cross-relief, the arguments advanced herein demonstrate no valid reason exists to overrule the Appellate Court's decision to reduce the punitive damage award.

For all the reasons set forth above as well as the arguments advanced below by defendant for cross-relief, the defendant requests this Court reverse and remand this cause for a new trial. In the event the Court decides not to reverse the judgment, then the defendant requests the Court affirm the Appellate Court's decision reducing punitive damages to $1 million dollars.

ARGUMENTS IN SUPPORT OF DEFENDANT-APPELLEE'S REQUEST FOR CROSS-RELIEF

I. Judge Varga's hostility towards and bias against the defendant and his trial/post-trial counsel demonstrated a high degree of favoritism and antagonism making a fair analysis of the relevant issues impossible.

Judicial remarks, criticisms, and hostility will support a claim of bias where the conduct reveals "such a high degree of favoritism or antagonism as to make fair judgment impossible." *In re Marriage of O'Brien*, 2011 IL 109039, ¶31; *Liteky v. U.S.*, 510 U.S. 540, 555 (1994). Initially, the defendant respectfully maintains this Court should determine the merit and fairness of the trial court's positions and rulings in light of the fact that Judge

Varga exhibited an undeserved hostility towards the defendant and his trial/post-trial counsel for pursuing the defendant's due process rights, and was also personally offended by post-trial defense counsel's arguments that he abused his discretion and committed other errors. These two improper mind sets created an unwarranted bias and unquestionably prejudiced the defendant against a fair consideration of the issues. A complete understanding of the breath of the trial court's bias/prejudice requires a complete reading of the transcripts of the post-trial hearings on February 8, 2019 and June 5, 2019 (R 2-44; R 89-208). Excerpts are set out below:

Hostility: Judge Varga referred to the defense attorneys and the defendant as the "bad people." (R 193, L4-7). The Judge said Muth would just make a third mistake if he had allowed her an additional day until January 16, 2019 to obtain a ruling from the Presiding Judge on the continuance motion. (R 133-134, L21-24, 1-5). The judge concluded the defendant, Muth, and Holstein all conspired to walk away from the trial because they could not get a continuance. (R 139, L 18-23; R 140, L9-16). He stated defense counsel lied. (R 105, L8-9; R 198, L15). In addressing one of defendant's post-trial arguments, he stated "that woman was abused, abused by a man like that." (R 162, L9-10). During the June 5th hearing, attorney Ronald F. Neville ("Neville"), in response to Judge Varga's assertions that no trial judge would continue a trial assigned to the judge, said he had practiced law for 48 years and had on many occasions observed or learned about a trial judge continuing a trial assigned to him or her. Judge Varga responded with sarcastic commentary such as "good for you" (R 116, L2), "Good for your 40 years...Yeah, well, I don't want to say anything more about that. I could, but I don't want to say anything about that" (R 145, L4-8), and referred to Neville

as "Mr. 48 Years Attorney."(R 191, L12). The judge responded to Neville's oral arguments with sarcastic remarks including "You'd be a terrible judge" (R 116, L24); "Good reason. Good logic" (R 134, L5); "That's another unbelievable argument. Keep it up. Keep it up" (R 151, L9-10); and "Can't wait to hear that one." (R 157, L13-14).

During the same hearing, Judge Varga intentionally misinterpreted statements of Neville and his co-counsel, Terence Mahoney ("Mahoney"), portraying them as misogynistic. At R.163, lines 12-16, Judge Varga states "I'm saying the testimony was severe enough to warrant future damages without a doctor, a retained opinion witness. Well, you know, sexual assault is bad, man. Come on." In lines 17-18, Neville states "We respectfully disagree, Judge," clearly differing with the proposition that the testimony of a doctor was not warranted (as clarified on page R. 166, lines 10-13). Nevertheless, Judge Varga continued to insist Neville said sexual assault is not bad. (R 163, L19-24; R 164, L1-14).

During the June 5th hearing, Judge Varga stopped the oral arguments to criticize attorney Holstein who was sitting in the courtroom with other spectators. (R 164, L15-24; R 165, L1-13). When Mahoney argued the plaintiff claims of a subjective condition, such as emotional injuries, required the corroborating opinion testimony of a physician, (R 181, L 9-13), Judge Varga persisted in purposefully misunderstanding Mahoney's argument as advocating the position that a woman who is sexually assaulted cannot recover unless she sustained objective injuries. (R 182, L24; R 183, L1-2). Judge Varga said Mahoney's position is that a "woman can't get money after she was raped unless she has objective evidence." (R 183, L1-2). Throughout Mahoney's argument, Judge Varga repeatedly accused him of being anti-woman, e.g., "But what I'm trying to point out to get you in support of

women..." (R 180, L18-19); "You better watch what you're saying to the women, the community of women, okay?" (R 182, L18-20); and "That's what your position against women is, that a woman's sworn testimony is not good enough..." (R 183, L4-6). During the June 5th hearing, Judge Varga deemed the plaintiff's testimony to have conclusively proven her allegations of sexual assault stating "[t]his lady was raped" and "[s]he was the victim of sexual assault, physical assault, mental, psychological assault." (R 160, L23-24; R 92, L16-18). In doing so, Judge Varga relied upon plaintiff's untested, non-cross-examined, self-serving testimony.

Personal offense to charges of error: Judge Varga expressed personal offense and indignation to any suggestion he erred or abused his discretion. During argument, Judge Varga said, "Maybe the attorneys made errors, not the judge. Sounds like the attorneys made a couple errors here, not the judge. I hate to bring that up, but you're saying the judge made all the errors, but, by golly you can't get an emergency motion to continue trial?" (R 120, L11-16); "Yeah, so I'm making all the mistakes" (R 135, L16-17); "motion to continue...and, boy, I can't wait to get to that one" (R 103, L3-5); "What do you got, like a hundred things I did wrong? Is that abuse of discretion again?"(R 150, L20-22). In a tone that cannot be described, the Judge said "You claim everything I do, including follow the rules by the law division, I'm wrong, I'm wrong, I'm wrong" (R 198, L16-18). In discussing the issue of whether a medical record was properly received into evidence, Judge Varga said, "Because you abandoned the jury process, okay, the jury system, forget it, man. You know, you waived all this stuff. You should have been here to object. You really should at some point. Come on. You're stretching this too far, you really are." "You know you don't do this you don't do

that, you know, you lie, and you don't follow the rules. You come back afterwards. You claim everything I do, including following the rules by law division, I'm wrong, I'm wrong, I'm wrong" "I'm right on almost everything legal. This is really ridiculous, to be honest with you." (R 198, L19-20).

Based upon the allegations against defendant, Judge Varga expressed outrage at defendant's post-trial argument that the court failed to consider the human aspects of litigation, such as the severe illness of Muth's mother and the critical medical condition of Beau's father. Judge Varga characterized said argument as an attempt to make defendant look like a "victim," saying "that was the last one when you tried to make Beau Parrillo sound like a victim..." when the court listened to the plaintiff testify how "she was the victim." (R 92, L4-5, 12-13).

The Appellate Court wrote that all the trial judge's comments "...stem from frustration with the defense's behavior rather than indicating deep-seated favoritism or antagonism. Indeed, Judge Varga's comments came after trial, and thus could not have prejudiced the defense during trial. See *Calabrese*, 2015 IL App (3d) 130827." (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-97, ¶37). The facts in *Calabrese*, where the trial court chided the defendant's attorney for not recognizing that liability in that case should have been admitted, have no relationship to the trial court's statements in the instant case which demonstrate a high degree of favoritism or antagonism against the defendant and his counsel (both his trial and post-trial counsel) as to make a fair analysis of the legal issues impossible. The defendant maintains a complete reading of the judge's comments and personal attacks on trial and post-trial counsel (See: R. 2-44, 89-208) evinced a hostility

towards the defendant and his counsel as well as judicially inappropriate and juvenile reaction to criticism of the trial judge regarding purported errors and abuse of discretion at the trial. The trial judge was unable to objectively analyze the issues and thus his findings/rulings should be disregarded.

Judge Varga should not have proceeded to trial but rather should have granted the emergency motion to continue the trial, or, at a minimum, held the case on his call until the Presiding Judge was able to rule on the continuance motion. The Appellate Court opinion focuses on the amount of time the defendant requested in his motions for a continuance (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-94, ¶¶17-18), and ignored the defendant's argument that Judge Varga, at a minimum, should not have begun the trial but instead have held the trial over one additional day to allow a ruling on the continuance motion by the Presiding Judge.

The original emergency motion for a continuance of the trial was based, *inter alia,* on the fact that the defendant's attorney's mother was seriously ill and needed Muth's assistance as a trained caretaker to survive. The amended continuance motion presented the same circumstances, and added the fact that the party defendant's farther was unexpectedly taken critically ill in Florida.

II. The Trial Court abused its discretion in failing to hear and rule on the Emergency Motion For a Continuance of the Trial, or, alternatively, in failing to grant the Defendant additional time to obtain a ruling from the Presiding Judge and instead proceeding with a jury trial in the absence of the Defendant and Defendant's Attorney.

On January 7, 2019, the parties answered ready for trial before the motion judge, and the matter was continued to January 14, 2019 for assignment by the Presiding Judge to a trial judge. (R C332). On January 13, 2019, Muth filed an emergency motion for a continuance of the trial (R C526, ¶5). The basis of the motion was the fact Muth's mother, Mary Muth, was seriously ill with chronic obstructive pulmonary disease, respiratory failure, and emphysema, and in immediate need a trained caregiver to help her breath. Muth was the only available, trained caregiver to assist her. (R C335, ¶6; C526, ¶5; C535, ¶¶2, 4; R 96, L6-9).

EVENTS OF JANUARY 14, 2019

At 10:00 a.m., Muth was assisting her mother to breath. (R C526, ¶6; C536 , ¶10). Holstein had been present at Judge Varga's courtroom when the jury venire arrived, but explained to Judge Varga that he could not represent the defendant at that time because (1) he was not certain his appearance had been filed, and (2) more importantly, he was asked by Muth on January 12, 2019 to assist her at trial on procedural matters, had only a surface knowledge of the facts, and had never spoken to the defendant. (R C885, ¶¶20, 22; R 149, L8-9). Under such circumstances, he had no ability to competently represent the defendant in the absence of Muth. (R C885, ¶22). When Muth arrived at 10:15 a.m. for the 11:00 a.m. hearing on the emergency motion, she was told the case had been assigned to Judge Varga and to present her emergency motion to him. (R C526-527, ¶7). While driving to the courthouse, Muth spoke to the defendant and learned his father was critically ill in Florida and the defendant intended to go to Florida to be with him. (R C526, ¶¶7-8; C544, ¶¶5-8). Muth appeared before Judge Varga at approximately 10:20 a.m. and explained she had filed an emergency motion for a continuance due to her mother's serious illness. (R C527, ¶8; R.

111, L16-18). Judge Varga refused to entertain the motion on the ground he had no authority to do so per Judge Flannery's standing order. (R 107, L14-21, 22-24; R C657, ¶VI(A)). Judge Varga recessed until 1:30 p.m. so Muth and Holstein could check the status of the motion and obtain a ruling. (R C527, ¶9).

Muth and Holstein went to the Law Division's Clerk's office and learned the Clerk rejected the electronic filing of the motion because Muth had inadvertently checked a box entitled "confidential." (R C527-528, ¶10; R 121, L9-10, 14, 16-17).

Muth prepared and filed an amended emergency motion which the Clerk accepted. The amended motion included the facts about the defendant's father's medical condition and Muth's mother's medical condition. (R C339-341). Muth returned to the Presiding Judge's courtroom to obtain a ruling on the emergency motion but the courtroom was closed for lunch with no support staff present. (R C528, ¶11). At 1:30 p.m. Muth presented the amended motion to Judge Varga for a ruling which he again declined to hear or rule upon because he believed he had no authority/jurisdiction do so. (R C528, ¶12; R 106, L22-24; C893, ¶1). Judge Varga next requested Muth call the defendant and discuss settlement. Muth did so, but the defendant was emotionally upset due to his father's medical condition and unable to discuss settlement. (R C528, ¶12).

Next, plaintiff advanced an oral Supreme Court Rule 237 motion for default judgment based on the defendant not being present. At the hearing Muth restated the reasons set forth in the continuance motion and asked Judge Varga to at least hold the case over for a few days to determine the status of both her mother's health and the defendant's father's medical condition. (R 66, L12-14; R 7, L18-20; C528-529, ¶13). Judge Varga denied the

motion without prejudice. (R C528-9, ¶13). Because the time was approximately 3:00 p.m., Judge Varga continued the case until the next morning so Muth could try and present the defendant's emergency motion for a continuance prior to jury selection. (R C529, ¶13; R 66, L12-14).

EVENTS OF JANUARY 15, 2019

On January 15, 2019, at approximately 8:00 a.m., Muth was with her mother whose medical condition was deteriorating. Her oxygen levels were low, and she needed emergency assistance from Muth to breath. (R C529, ¶14; C536-537, ¶11-13). While Muth was assisting her mother, she called Holstein to have him inform the Court that she would not be in court at 9:30 a.m., but Holstein did not answer. Muth had received a voicemail from plaintiff's counsel at 9:39 a.m. stating they were beginning to pick a jury without her or her client being present. (R C529, ¶14). Muth returned the call around 10:15 a.m. but no one answered. (R C529, ¶14). Muth said she called the courtroom to explain her absence but the phone just rang, without allowing her to leave a message. Muth also attempted to contact the Office of the Cook County Clerk, but only reached the automated system. At the June 5th hearing, Judge Varga stated he and his clerk were unaware of any phone call from Muth on the morning of January 15th, but could not refute the call was made. (R C529, ¶14; R 101, L10-11, 17-20; R 100, L20-22). At approximately 9:35 a.m., Holstein received a phone call from plaintiff's counsel, Daniel Voelker ("Voelker") advising Holstein that jury selection had begun and asking whether Holstein would be participating. Holstein responded that jury selection should not begin as Muth was intending to present her motion for a continuance to

the Presiding Judge. Voelker informed Holstein that Judge Varga would proceed with jury selection, despite Muth's absence. (R C884-885, ¶19).

At the June 5, 2019 hearing Judge Varga insisted that "he and Muth had an agreement" to begin trial on the morning of the January 15th which Muth denied. (R 115, L4-7; R 129, L18-22; R 132, L6-18). *When Judge Varga began the trial in the absence of the defendant and his attorney he did not know whether or not the Presiding Judge had in fact ruled on or was about to rule on the continuance motion or the reasons Muth was not present.* (R C527, ¶8; RC884, ¶11; R 114-115, L23-24, 1-2).

Also, the Appellate Court maintains Muth had "plenty of time to present the motion to the Presiding Judge, especially as an emergency motion." (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-97-98, ¶41). The facts of this case dictate otherwise. As discussed above, Muth's attempts to obtain a ruling on the continuance motion by the Presiding Judge were frustrated by her need to care for her mother. Holstein had advised Judge Varga he was aware Muth was caring for her mother, but that she intended come to present the defendant's emergency motion at 11:00 a.m. to the Presiding Judge. (R C885, ¶20). The Appellate Court argues that Holstein could have presented the motion for continuance to the Presiding Judge as though he knew Muth was not doing so. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-98, ¶42). But the record clearly demonstrates that Muth was unable to speak to Holstein, and Holstein, therefore, did not know she was running late due to her mother's medical condition. This is not a situation where Holstein deliberately decided not to present the continuance motion to the Presiding Judge. He reasonably thought Muth was doing so because he was not advised otherwise. This was a lawyer who was only involved with the

case for a few days and had never spoken to the defendant. Obviously, he was not competent to proceed to trial under such circumstances. In this situation, Holstein would take direction from the lead attorney, Muth, and did so in waiting for her to obtain a ruling from the Presiding Judge.

Judge Varga asked Holstein to represent the defendant but Holstein declined for the reasons stated above (p. 27 *supra)*. Holstein also believed his participation could waive the defendant's due process rights and impair his right to obtain a continuance. Holstein and Voelker were unable to confirm Holstein's appearance had been filed with the Clerk. (R C885, ¶¶20-22; R 149, L8-9; C530, ¶18).

Muth arrived at court at about 11:30 a.m. and went directly to the Presiding Judge's courtroom where she was informed it was too late for the emergency motion to be heard and Muth should raise the issue with Judge Varga. Muth asked the clerk to speak with the Presiding Judge and ask him to hear and rule on the emergency motion. The Clerk left and about 15 minutes later returned to tell Muth the Judge instructed Muth to come back tomorrow at 11:00 a.m., for a hearing on the motion. Muth next went to Chief Judge Evans' office where she learned the Chief Judge was not in. (R C530-531, ¶18; R 122, L5).

Muth went to Judge Varga's courtroom and saw the plaintiff on the stand testifying. The Appellate Court was comfortable saying Muth should have simply joined the trial and represented her client. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-93, ¶4). But the Appellate Court's position makes no sense. Muth had been denied the opportunity to hear the plaintiff's opening statement and make an opening statement of her own, present motions in *limine*, could not have known the facts to which the plaintiff had already testified negating

any effective cross-examination, could not defend the case without her unavailable client's assistance and testimony (R 104, L7-9), and her co-counsel had been involved in the case for one day and never spoke to the defendant in his life. Add to those circumstances that she was dealing with her mother's medical emergency. (R 106, L9, 14-16). Because she realistically had no other choice, Muth went to her office to prepare and file a motion for a mistrial. (R C531, ¶20). In light of the circumstances set forth above, the Appellate Court's position on this issue is patently unreasonable.

The Appellate Court incorrectly states in its decision that "Throughout the trial Muth and Holstein stood in the hallway and walked in and out of courtroom several times but did not participate in the trial. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-95, ¶25). As explained above and uncontradicted in this record, Muth was never near Judge Varga's courtroom until after she left Judge Evan's chambers. When she arrived, the plaintiff was already testifying. Holstein was present but, for the reasons previously explained, could not competently represent the defendant. See, *supra,* pages 6 and 7 of defendant's Statement of Facts.

The Appellate Court decision fails to accurately report all Muth did to obtain ruling by the Presiding Judge, i.e. asking the Clerk to speak to the Presiding Judge who said Muth should return the next day for a hearing on the continuance motion, and going to Judge Evans chambers to determine if he could assist on obtaining a ruling on the motion. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-94, ¶19; R C530-531, ¶18; R 138, L6-7). In addition, the Appellate Court, by saying Muth was "allegedly with her mother, "implicitly and inappropriately suggests Muth's mother's medical condition was less than reported by

Muth or Muth lied about being with her mother. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-95, ¶24). That Muth's mother's medical condition constituted a medical emergency and Muth was the only available person to assist her and was assisting her on the morning of January 15th is uncontradicted in the record of this case. (R C529, ¶14; R 101, L10-11, 17-20; R 100, L20-22, R C530-531, ¶18; R 138, L6-7, R C535-537, ¶¶2, 4, 9-14).

When Muth returned with her motion for mistrial, she and Holstein entered the courtroom. The Judge and Voelker were finalizing jury instructions. (R 147, L14-23).

While the jury was deliberating, Muth and Holstein presented the defendant's motion for mistrial. Muth argued the substance of the amended emergency motion for a continuance, that the defendant had a right to be present for his own trial to present his meritorious defense, and that proceeding to trial without her and the defendant constituted a complete and papable injustice. Judge Varga denied the motion for mistrial on same ground he refused to rule on the continuance motion, i.e. he had no authority to continue the trial. Judge Varga summed up the logic of his ruling by saying, "procedure is procedure, motion is denied." (R C531-532, ¶¶22-24; R 144, L1-2; R 104, L6-10; R 20, L6-7).

The Appellate Court decision agrees with the trial judge that he had no authority to rule on the continuance motion because of a "local rule." (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-98, ¶43). The trial judge abused his discretion in two separate ways: 1. he had the authority to rule on the continuance motion and abused his discretion by not believing he had such authority, and 2. he abused is discretion by not delaying the trial one additional day to allow Muth to secure a ruling on the continuance motion from the Presiding Judge. The Appellate Court decided Muth could have appeared before the Presiding Judge

but failed do so. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-93, ¶4). Yes, Muth could have appeared before the Presiding Judge if she opted to risk her mother's death, a fact the Appellate Court rejects by saying she should have made other arrangements. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-97-98, ¶¶41-42). Viewing the situation with the benefit of hindsight, perhaps Muth could have made other arrangements. Unfortunately, the reality of medical emergencies is that they are unpredictable, and coping with a medical emergency of a close family member is often emotionally distressing, which often precludes a fully logical and methodical thought process.

IIA. Emergency Motion for a Continuance of the Trial presented a valid basis for the continuance of the trial

1. The Muth Affidavit

Muth's affidavit identified herself as lead counsel for the defense and averred her mother was in critically poor health and needed assistance in breathing from a trained caregiver. She added that she and her brother were the primary, trained caregivers for her mother and her brother was unavailable. Muth said her mother's health would likely improve in the next few weeks, allowing Muth to return to the practice of law full time. Also, Muth explained the main witness for the defense was the defendant himself who could not be present due to the fact his father had unexpectedly become critically ill. (R C525-529, ¶¶7, 8, 13, 22). Muth's mother's affidavit along with her medical records confirm her serious medical condition, the fact her son was unavailable during the relevant period to care for her, and the fact she needed assistance from a trained, caregiver to assist her in breathing. (R C535-537, ¶¶2, 4, 9-14).

2. The Defendant's Affidavit

The defendant's original affidavit filed in support of the amended emergency motion for a continuance of the trial essentially stated the defendant's father was unexpectedly diagnosed as critically ill and that, due to the grave nature of his illness, the defendant intended to take the next flight to Florida to be with his father. (R C337-338, ¶3). As demonstrated by the father's medical records and his affidavit, the father was unquestionably in critical condition and in danger of dying. (R C544-565).

The defendant's affidavit also says he flew to Florida and told his attorney he was in Florida. These statements were not true. Without objection, during the post-trial motion proceedings, a second affidavit of the defendant ("defendant's second affidavit") was filed. (See: R 199, L6-8, 14-17, 23; R 207, L17). In defendant's second affidavit, he admits to the untrue statements in his first affidavit regarding his location, and explains: (1) on January 13, 2019, he learned his father, Richard Parrillo, was admitted into the Adventura Hospital in Florida in critical condition; (2) he has a close personal relationship with his father and when he learned of his father's medical mental condition on January 13th, he became emotionally distressed, despondent, extremely anxious, and afraid he was about to lose his father; (3) he spoke to Muth and advised her about his father's medical condition and that he was in no mental condition to proceed to trial and testify; (4) he told Muth he intended to travel to Florida on January 14th, to be with his father and secured airlines reservations for a flight to Florida and a return flight (which are attached to the affidavit) but never traveled to Florida on January 14th because he learned from his father's contacts that the doctors at Adventura Hospital were considering transporting his father via air ambulance to the University of

Chicago Hospital where his treating doctors were located; (5) the air ambulance transfer actually occurred on January 16th; and, (6) the defendant did not want to go to Florida only to learn that his father had left that State and returned to Chicago.

The defendant added that his distress level was so high that he began to made poor judgment decisions including telling his attorney when he spoke to her on January 14th that he did fly to Florida and was still in Florida when he spoke to her. The defendant explains that at the time he made the untruthful statements, he did not perceive his location to be the basis for a continuance of the trial but instead believed the basis was his father's medical condition, his desire to be with him, and, due to his mental state, his inability to testify. The defendant caused his signature to be entered onto the original affidavit, but did not actually read the affidavit, and again did not perceive his location to be the basis for a continuance of the trial. The defendant was simply not thinking clearly at this time. (R C786-788).

The essential and relevant facts are that the defendant's father suffered an unexpected medical crisis not allowing prior notice until the day of the trial. The father's critical health condition placed the defendant into an improper state of mind to testify. Also, the defendant's attorney had to care for her mother who was suffering from a severe medical condition precluding her ability to participate at the trial. This was the defendant's first request for a continuance. Given the circumstances, the motion proposed a reasonable request which if heard, should have and likely would have been granted by the Presiding Judge. The fact the defendant was not in Florida does not change the import of the legal issues presented in this case. When a party's father is unexpectedly taken ill and in danger of death, the party's location is irrelevant. Under the such circumstances the party is entitled to a continuance,

especially where minimal inconvenience is imposed on the opposing party. In the instance case, the only witness called by the plaintiff was the plaintiff herself.

IIB. As demonstrated by the law discussed below, these circumstances undoubtedly merited a continuance of the trial.

(i) Criteria for Granting Continuance

The granting of a motion to continue a trial is governed by Supreme Court Rule 231, which states, "[n]o motion for the continuance of a cause made after the cause has been reached for trial shall be heard, unless a sufficient excuse is shown for the delay." Ill. S. Ct. R. 231(f). The purpose of Rule 231 "is to avoid prejudice or unfairness to either party and the requirements of the Rule are designed to provide an appropriate basis for the exercise of the trial court's discretion." *Bullistron v. Augustana Hosp.*, 52 Ill. App. 3d 66, 70 (1st Dist. 1977) (citing *N. Fed. Sav. & Loan Ass'n v. Tokoph*, 110 Ill. App. 2d 254 (1st Dist. 1969)). As such, circuit courts are granted "broad discretion ... in the allowance or denial of continuances..." See, e.g., *Reecy v. Reecy*, 132 Ill. App. 2d 1024, 1027 (3d Dist. 1971) (citing *Hearson v. Graudine*, 87 Ill. 115 (1877)).

Rule 231 contemplates a party seeking a continuance "on account of the absence of material evidence." Ill. S. Ct. R. 231(a). A request for a continuance under Rule 231(a) must be supported by an affidavit which addresses (1) due diligence, (2) the nature of the material evidence, (3) the place of residence of any witness possessing the material evidence, and (4) assurance that with additional time the evidence can be procured. Failure to include an affidavit with such a motion is sufficient basis for the motion's denial. See, *e.g.*, *Howard v. Francis*, 204 Ill. App. 3d 722, 726-27 (3d Dist. 1990) (citing *Mikarovski v. Wesson*, 142 Ill.

App. 3d 193 (2d Dist. 1986), but Illinois courts have found that a court abused its discretion even when no affidavit has been filed. See, *e.g.*, *Jack v. Pugeda*, 184 Ill.App.3d 66 (5th Dist. 1989). Affidavits presented by a party are not subject to counter-affidavits. *Waarich v. Winter*, 33 Ill. App. 36, 1888 WL 2410 (1st Dist. 1889).

Clearly, the original emergency motion and the amended motion for a continuance presented sufficient reasons for a continuance and demonstrated that material evidence, i.e., the testimony of the defendant who would have denied he committed the wrongdoing claimed by the plaintiff, was involved. Due diligence was established as Muth's mother's life-threatening breathing issues and defendant's father's critical medical condition were recent in nature. (R C786-788, ¶2; C526, ¶5; C529, ¶14; C536, ¶¶10-11; C544, ¶5). Judge Varga's statement in his June 6, 2019 order, and the Appellate Court's adoption of his position (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-95-96, 100, ¶¶29, 56) that the absence of a physician's affidavit is "suspicious" defies understanding in light of the fact the record contains the affidavit of Richard Parrillo and his medical records and Mary Muth's affidavit along with her medical records which includes a letter from her physician. (R C891).

(ii) Standard of Review

Under Illinois law, a litigant does not have an absolute right to a continuance; instead, the decision to grant or deny a motion for continuance is within the sound discretion of the circuit court. *K&K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶22. As such, a circuit court's denial of a motion for continuance will not be disturbed absent an abuse of discretion or a palpable injustice to the moving party. *Hearson v. Graudine*, 87 Ill.

115, 120 (1877) ("a sound legal 'discretion' is meant, and any abuse of such 'discretion' is reviewable in an appellate court, as any other error committed that works palpable injustice." *In re K.O.*, 336 Ill. App. 3d 98, 104 (1st Dist. 2002) (citing *In re K.S.*, 203 Ill. App. 3d 586, 596 (4th Dist. 1990); *Cont'l Ill. Nat'l Bank & Trust Co. v. E. Ill. Water Co.*, 31 Ill. App. 3d 148, 157 (5th Dist. 1975); *Thomas v. Thomas*, 23 Ill. App. 3d 936, 940 (1st Dist. 1974) (citing *Condon v. Brockway*, 157 Ill. 90 (1895)). *Lavallais v. Irvin (In re I.I.)*, 2016 IL App (1st) 160071; *People v. Mislich (In re Mislich)*, 2016 IL App (1st) 132662-U, ¶73 (citing *ICD Publications, Inc. v. Gittlitz*, 2014 IL App (1st) 133277, ¶88).

According to the trial judge and the Appellate Court, beginning a trial where the plaintiff was the sole witness and the entire trial would only consume a few hours was more important than a party's father in danger of dying and a defense counsel's mother who needed her attorney daughter to breathe.

In *Ullmen v. Dep't of Registration and Educ.,* 67 Ill. App. 3d 519 (1st Dist.1978), a real estate broker requested a continuance based on a sudden and grave illness of Ullmen's attorney's wife which prevented the attorney from representing the broker or requesting a continuance at any earlier date. The broker received a first time continuance which the Department considered final based on its policy to only allow one continuance. The Department denied the broker's request for a continuance so her attorney could be present. In finding a abuse of discretion, the *Ullmen* court wrote:

> "The illness of an attorney has been held to be a valid reason for a continuance. (*Nowaczyk v. Welch* (1969), 106 Ill.App.2d 453, 245 N.E. 2d 894; See also *Kehrer v. Kehrer* (1960), 28 Ill.App.2d 296, 171 N.E.2d 239). This justification for a continuance logically extends to the illness of a member of the attorney's immediate

> family. (See *Ford v. Ford* (1942), 150 Fla. 717, 8 So.2d 495, cited in *Nowaczyk*, at 456)." *Ullmen*, 67 Ill.App.3d at 522.

Certainly the same logic applies to the critical illness of a party's family member where the illness causes the party to be mentally unable to proceed. *Stern v. Stern,* 179 Ill. App. 3d 313 (1st Dist. 1989).

Judge Varga's insistence that the case proceed to trial on the morning of January 15, 2019 was unreasonable and an abuse of discretion. Other options were available to Judge Varga, i.e., remanding the case back to the Presiding Judge to rule on the emergency motion and, thereafter, reassign the case for trial on a date certain, or continuing the case for a short period of time before him, e.g. another day to January 16, 2019, so a ruling by the Presiding Judge could be obtained by defendant's attorneys and the setting of a new time for trial if the motion was granted. The plaintiff's case involved only one witness which was the plaintiff. Continuing the case for one more day to obtain a ruling by the Presiding Judge would have involved minimal inconvenience to the plaintiff and her attorneys, and the plaintiff would not have incurred any additional costs for experts or other witnesses.

The circumstances of this case were extreme and unique, i.e., an attorney with a seriously ill mother and a party with a critically ill father. Notwithstanding these circumstances, the Appellate Court chose to ignore these medical emergencies and resolve the issue by referring to defendant's trial counsel as stumblers and incompetents. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-97-98, ¶¶41, 42). The Appellate Court found that any reasonable person under the circumstances presented would have denied the continuance motion, which is not only contrary to the ruling in Ullmen, but unreasonable in

light of actual facts. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-98, ¶43). The Appellate Court states in its opinion, "Nothing in the record shows that Parrillo's counsel ever asked Judge Varga for a continuance for a day or two; they insisted on a 30-day to 60-day continuance, which only the presiding judge could grant." *Id.* First of all, the record affirmatively reflects that Muth asked Varga to hold the case on call for a few days to obtain a ruling from the Presiding Judge (R 66, L12-14; R 7, L18-20; C528-529, ¶13; Muth Affidavit, App. p. A-109-110, ¶13). Second, the record confirms Judge Varga had no idea when he started the jury trial if the Presiding Judge had heard the continuance motion or was about to, or why Muth was not in the courtroom. Third, as explained below, Judge Varga had the authority to grant the continuance. In the end, Judge Varga was simply intent, for no sensible reason, on proceeding to trial without learning all the relevant circumstances. During the hearing on the post-trial motions, Judge Varga confirmed he had no intention of allowing the defense more time to obtain a ruling from the Presiding Judge - he just failed to furnish an appropriate and legal reason why he should not have done so.

Illinois Courts of review find an abuse of discretion by the trial court based on the equitable concept of "doing justice," and appellate courts typically find an abuse of discretion in circumstances where "the ends of justice clearly require" a continuance. *Curtin v. Ogborn*, 75 Ill. App. 3d 549, 553 (1st Dist. 1979) (citing *Bullistron*, 52 Ill.App.3d at 70). Appellate courts have found an abuse of discretion in circumstances where the denial of the continuance was manifestly unjust. See, e.g., *Lindeen v. Ill. St. Police Merit Bd.*, 25 Ill.2d 349, 351 (1962) (upholding lower court's reversal of State Police Merit Board's decision to discharge police captain based, in part, upon said Board's refusal to grant the captain a

reasonable continuance due to the unavailability of a material witness); *Bethany Reformed Church v. Hager*, 68 Ill.App.3d 509, 512 (1st Dist. 1979) (finding an abuse of discretion where court denied continuance for a 78-year-old man who was hospitalized at the time of trial) ("More is at stake here than a legalistic point of civil procedure; we are also dealing with a fundamental legal right, and a fundamental human concern as well. We are deciding upon a citizen's right to appear in court on the critical issue of whether he is entitled to remain in possession of his home...") (emphasis supplied); *Vollentine v. Christoff*, 24 Ill.App.3d 92, 96 (3d Dist. 1974) (reversing lower court judgment which was entered after circuit court refused to grant a one-week continuance when the plaintiff discovered that a material witness had left on vacation the morning that jury selection began) ("[N]o litigant should be foreclosed of his right of a day in court merely because circumstances beyond his control impel his request for a continuance"). In the case at bar, in addition to the defendant's unavailabilty, the emergency motion stated that two other critical defense witnesses were unavailable. See also: *People v. Bullock (In re S.B.)*, 2015 IL App (4th) 150260 (court's refusal to wait for arrival of respondent mother at hearing to appoint her children wards of the state was abuse of discretion, because her delay was due to snowfall; *Jack v. Pugeda*, 184 Ill. App. 3d 66, 76 (5th Dist. 1989) (citing *Rutzen v. Pertile*, 172 Ill. App. 3d 968, 975 (2d Dist. 1988)) (holding that "it is exalting form over substance to refuse to hear testimony or refuse to give a short continuance where the witnesses are available and the proceedings have not yet concluded.") (emphasis added).

The Appellate Court at ¶¶46-51 of its decision cites decisions it claims justify the ex-parte trial conducted in this case, but none of them are apposite. (*Doe v. Parrillo,* 2020 IL

App (1st) 191286, App. p. A-98-99, ¶¶46-51). *In City of Joliet v. Szayna*, 2020 IL App. (3rd) 180332, the court was faced with a pro se litigant charged with building violations who failed to file an answer to the complaint. Szayna, ¶30. In *In re Marriage of Garde*, 118 Ill.App.3d 303, 307 (5th Dist. 1983), the court simply held that a failure to file an answer permitted the trial court to enter a default judgment. In *Garde,* the paramount issue was whether the husband and his attorney received notice of a hearing for dissolution of the marriage and division of marital assets. The court simply found that proper notice had been provided and the husband/attorney failed to appear allowing the court to proceed to an ex-parte hearing. Again, this case has nothing to do with the issues before this Court in the case at bar. The defendant is not claiming he did not have notice of the trial - he is claiming that due to medical emergencies involving both him and his attorney, a continuance of the trial should have been granted. In *Harnack v. Fanady*, 2014 IL App (1st) 121424, a default judgment was entered against the husband, Fanady, in favor of his wife in a divorce action. The appellate court refused to vacate the default judgment because Fanday refused to participate in the dissolution proceedings for 15 months, evaded service of process, refused to comply with prior court orders, attempted to evade the jurisdiction of the court, defrauded the trial court and a Florida court by obtaining a dissolution of marriage in Florida, forged a dissolution judgment, and attempted to hide marital assets. "Fanady was the architect of is own predicament, and his complaint now that he was denied substantial justice will not be heard by this Court. *Id.* at ¶46-47. This case has no application to the case at bar.

The Appellate Court claims "Holstein attended the start of jury selection" which is untrue. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-99, ¶49). The facts plainly

demonstrate, he was present when the jury venire arrived but told the court he could not participate and the reasons why and also said Muth was intending on presenting the continuance motion to the Presiding Judge. (R C885, ¶¶ 20, 22; R 8, L16; R149, L8-9). The Appellate Court wrote: "They (Muth and Holstein) could have cross-examined Doe, presented evidence, and attended the jury instruction conference. Instead, they decided to pin their client's case on a motion for a mistrial." *Id.* This statement confirms the Appellate Court simply turned a blind eye to the actual facts of this case. Throughout this brief, the defendant has demonstrated Muth was doing all she could to obtain a ruling on the continuance motion and was nowhere near the courtroom, Holstein had no ability to competently represent the defendant, and the defendant was not present due to his father's medical emergency.

(iii) Trial Court's Abuse of Discretion in the case at bar caused a palpable injustice to the Defendant

The Appellate Court incorrectly stated in its opinion, "Nothing in the record shows that Parrillo's counsel ever asked Judge Varga for a continuance for a day or two; they insisted on a 30-day to 60-day continuance, which only the presiding judge could grant." (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-98, ¶43). However, on January 14th, during argument regarding plaintiff's Rule 237 motion, Muth specifically requested Judge Varga hold the case over for a few days so she could ascertain the status of her mother's health and defendant's father's health. (R C528-529, ¶13; Muth affidavit, App. p. 109-110, ¶13).

Judge Varga held the case at bar on his call for a single day but refused to hold the case over for a few more days to resolve the emergency motion for a continuance issue. When the argument was made by Neville that he should have held the case over to January 16th before starting the trial to allow a ruling on the continuance motion, Judge Varga made the inexplicable and unsupportable retort that doing so would have created Muth's "third mistake." (R 114, L6-12; R 113, L1-24; R 134, L1-5).

Said Judge Varga, "I gave Mr. Parrillo's attorneys another day - another opportunity to go get a continuance" (R 66, L12-14); "That's what I gave her. I stopped - I told her the next day to go at 11:00 o'clock, and I was going to stop jury selection for her to go see Flannery"(R 113, L16-19); "and then I held it a day, we had an agreement, suspend jury selection, go do it. It's not done, two opportunities to present a motion" (R 194, L9-12); "I held it a day" (R 195, L3). When Neville argued that he should have held the case over for one more day prior to staring the trial, Judge Varga responded, "What, make another - a third mistake" (R 133, L21-22); "she made two mistakes, so" (R 133, L24); "should she get a third mistake" (R 134, L1); "so I give her a third day so she can make a third mistake" (R 134, L4); "So she could make a third error" (R 138, L 1-2). For the complete colloquy between Judge Varga and Neville, see App., p. A-31.

The defendant posits that the trial court abused its discretion in failing to either hear and rule on the emergency motion or, alternatively, allowing the defendant the additional day necessary to obtain a ruling on the motion by the Presiding Judge. The trial court's rulings caused a palpable injustice to the defendant.

First of all, the defendant had a meritorious defense to the instant plaintiff's claims. The defendant would testify at trial that none of the misconduct plaintiff alleged to have been performed by him actually occurred. The defendant would deny that he ever assaulted, battered, or sexually abused the plaintiff at any time including those times alleged in the amended complaint. The defendant denied the plaintiff's allegations in his deposition taken in this case. (R C532, ¶23; C787-788, ¶7). Because the defendant would testify that the plaintiff's claims of misconduct against him to which she testified at trial are false, questions of fact undoubtedly existed which needed to be resolved by the jury. Accordingly, a meritorious defense existed. In *Pirman v. a M Cartage, Inc.*, 285 Ill.App.3d 993 (1st Dist. 1996), the court ruled that a meritorious defense is established where sufficient facts are set forth which, if believed by the trier of fact, would defeat the plaintiff's claim, and whether the defendant would ultimately prevail is not an issue in establishing a meritorious defense. See also: *Cunningham v. Miller's Gen. Ins. Co.*, 188 Ill. App. 3d 689, 693 (4th Dist. 1989); *Bonanza Int'l, Inc. v. Mar-Fil, Inc.*, 128 Ill. App. 3d 714, 719 (2d Dist. 1984); *Yorke v. Stineway Drug Co.*, 110 Ill. App. 3d 1009, 1014 (1st Dist.1982)(overruled on other grounds) ("We believe that [petitioner's] allegations are sufficient to satisfy the requirements for the filing of a section 72 petition; whether [petitioner] ultimately recovers from [his opponent] is not here at issue").

Second, notwithstanding the Appellate Court's conclusion that only the Presiding Judge could grant the continuance motion (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-98, ¶43), the standing orders of the Law Division's Presiding Judge specifically and unequivocally state that a trial judge, after being assigned a case for trial, has the right and

authority to continue a case for trial under appropriate circumstances. See R. C656-658, entitled "General Administrative Order 16-2 - Trial Setting Call" which states on page 3 at Section IX, "Nothing in this order will limit the inherent power and discretion of any Judge to enter an order the Judge feels is appropriate." Neville and the trial judge discussed General Administrative Order 16-2 during the June 5th hearing. (R 124, L12-24; R 125 - 127; R 128, L1-10). The entire colloquy is set out at App. p. A-37. In essence, the Judge offered the position that Section VIB. of the subject order controlled which states:

> "All motions to continue trial on a case assigned to the Master Calendar Section must be presented to the Presiding Judge of the Law Division or his or her designee on the appropriate Courtroom 2005 motion call. Motions judges may not set or continue a case for trial (R C657).

Neville argued Section IX of the order superceded Section VI B. Judge Varga made the inexplicable response that Section IX was only "...a boilerplate line to appease full Circuit Judges. Come on. It's Cook County here." (R 126, L 3-16). Respectfully, Judge Varga's response and the Appellate Court's adoption of that position lacks any merit whatsoever. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-96, ¶30).

In addition, Judge Varga, as a Circuit Court Judge, undoubtedly had the inherent power to grant a continuance. A Presiding Judge does not have more authority than a Circuit Court Judge simply because he is a Presiding Judge. See: *Bd. of Trustees of Cmty. College Dist. No. 508 v. Rosewell*, 262 Ill.App.3d 938, 957 (1st Dist. 1992) observing that Circuit Courts, as part of the same constitutional court of general jurisdiction, have equal and concurrent subject matter jurisdiction. Circuit Courts are tribunals of general jurisdiction and even though these courts have various divisions, these divisions are not considered

jurisdictional. See: People ex rel. Jonas v. Schlaeger, 381 Ill. 146, 153 (1942) ("While it is true that there are 21 judges provided for by the statute, they cannot be regarded as a group. They do not act collectively. Each occupies an independent office with equal powers and duties. They cannot and do not act jointly, or as a group. They function separately and independently. Each holds a separate, although similar, office, in no sense jointly with, or dependent upon, the others. In their functions, power and duties they are, in every sense, equal.")

Judge Varga erroneously determined he could not grant a continuance. This position, under the circumstances, constituted an abuse of discretion and amounted to reversible error. An abuse of discretion always occurs when a trial court bases its decision on the an incorrect view of the law. *A&R Janitorial v. Pepper Constr. Co.*, 2018 IL 123220, ¶ 15. In *Bjork v. O'Meara*, 2013 IL 114044, ¶ 31, the Court wrote:

> "In the case at bar, the circuit court failed to order the deposition of Williams in the erroneous belief that it lacked the authority to do so. Error is committed when a trial court refuses to exercise its discretion in the erroneous belief that it has no discretion as to the question presented. *People v. Queen*, 56 Ill.2d 560, 565, 310 N.E.2d 166 (1974); see, e.g., *Moffitt v. Illinois Power Co.*, 248 Ill.App.3d 752, 758, 188 Ill.Dec. 735, 618 N.E.2d 1305 (1993); *Department of Public Aid ex rel. McNichols v. McNichols*, 243 Ill.App.3d 119, 123, 183 Ill.Dec. 330, 611 N.E.2d 593 (1993)."

Third, the circumstances in the case at bar demonstrate an abuse of discretion and palpable injustice to the defendant because the defendant was not allowed to present his defense against the plaintiff's claims. The defendant presented valid reasons for a continuance and was only asking for a short continuance. In fact, the defendant was only asking for enough time to present the emergency motion to the Presiding Judge. The

defendant had not previously requested a continuance. Denying the defendant the right to present his defense denied him a fundamental due process right.

III. The Trial Court failed to protect the rights of the defendant and the integrity of the judicial process.

The role of the trial judge is not that of a presiding officer or umpire. He is responsible for the justice of the judgment that he enters. *Freeman v. CTA*, 33 Ill.2d 103 (1965). In *City of Danville v. Frazier*, 108 Ill. App. 2d 477 (4th Dist. 1969), the court noted that the trial judge is not relegated to being a mere referee ruling upon specific items presented or that develop during the trial. "It is well-settled that it is always the duty of the trial court to control the proceedings to the extent necessary to insure each litigant a fair trial." *Id.* at 481. In the case at bar, the defendant should have been allowed to present his defense which was denied to him. However, once the trial court decided to proceed to trial without the defendant or defendant's attorney being present, he should have at a minimum required the proceedings be transcribed and recorded by a court reporter so the defendant would have a record of the evidence and exhibits admitted and the arguments of plaintiff counsel. This would have provided a basis to present arguments regarding errors committed at trial including the admissibility of certain testimony and whether proper foundations were established to admit certain evidence. A transcript would have allowed the defendant the opportunity to analyze the evidence and arguments regarding the plaintiff's injuries against the $1 million dollar compensatory award, and an $8 million dollar punitive award. Finally, a record of the instructions conference should have been made to determine the logic and legality of the instructions actually given to the jury. Requiring the plaintiff to have a court

reporter report the jury proceedings would have involved a mere phone call. The plaintiff's attorneys advised Muth that they intended to have a court reporter present and asked defense counsel if the defendant would pay half the costs. (R C655). Judge Varga ridiculed the notion that he, a full Circuit Court Judge, had the responsibility to require the presence of a court reporter. (R 150, L20-24; R 151, L1-9). The defendant respectfully requests this Court take judicial notice of the fact that many judges in civil cases in the Circuit Court of Cook County require parties to provide court reporters when the trial court deems a report of proceedings is necessary or appropriate. Also, without doubt, Judge Varga had the authority to order the presence of a court reporter. Subsequent to the entry of the judgment, the defendant filed a motion requesting copies of Judge Varga's notes regarding the substance of the plaintiff's testimony and the jury cards so the individual jurors could be contacted and interviewed regarding the plaintiff's testimony. The court denied access to his notes and the court advised defendant's counsel the jury cards had been destroyed and could not be recreated. (R C472-480; R C487).

IV. Neither the Defendant nor his Counsel abandoned the trial.

The trial judge and Appellate Court concurred that the defendant and his counsel abandoned the trial. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-93, 99, ¶¶4, 50-51).

In the plaintiff's response to the defendant's post-trial motions, certain issues were raised and discussed by Judge Varga at the June 5, 2019 hearing.

The plaintiff argued and the trial court adopted the theory that Muth, Holstein, and the defendant deliberately abandoned the trial because they could not obtain a ruling on the

motion for a continuance of the trial. Plaintiff wrote, "Both counsels (sic) for Defendant, Allison K. Muth ('Muth') and Robert Holstein ('Holstein'), with over seventy (70) years of combined legal experience, made the deliberate decision not to defend their client in this case." (R C806). However, the plaintiff made no attempt to dispute the statement of facts set out in the Post-trial Motion supported by affidavits (R C491-494) which clearly demonstrates Muth's efforts to protect the defendant's rights by seeking a ruling on the continuance motion both before Judge Varga and the Presiding Judge's courtroom, being present to participate in the instructions conference, and presenting a motion for mistrial. All her efforts belie any notion Muth and Holstein "abandoned" the defendant. The Appellate Court also mis-characterizes Holstein's involvement in the case. The facts set out on page 7 of this brief, *supra*, demonstrate he could not have competently represented the defendant at trial. Muth only asked Holstein to assist her on procedural matters, a commonplace procedure where the second attorney takes notes, keeps track of exhibits, offers opinions to the lead attorney about additional questions, objections, and strategy, but cannot replace the lead attorney because of an incomplete knowledge of the facts, documents, rulings prior to trial, and the like. Holstein had not previously met or spoken to the defendant and thus could not possibly be prepared to present him as a witness or cross-examine the plaintiff based on the defendant's anticipated testimony in his defense. (R C882, ¶4)[1] The plaintiff conceded

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[1] The "70 years of combined legal experience" referenced by the plaintiff is calculated sophistry. Holstein was licensed to practice in 1962 and Muth in 2014. Adding the years together does not change the fact Holstein was not in a position to do anything other than assist Muth at trial.

in her Response to the defendant's Post-trial motion that Holstein informed Judge Varga of these facts. (R C811).

The Appellate Court also cited the defendants first affidavit, in which he gave inaccurate information about his location, as evidence of abandonment. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-99, ¶50). All of this was explained in defendant's second affidavit. (R C783-784, ¶¶3-7; C494-496). Nothing said by Judge Varga or advanced by the Appellate Court rebuts the fact that the defendant's father was near death because of several serious health issues and that he decided not to go to Florida because he learned his father was likely to be returned to Chicago by air ambulance. Moreover, neither the Appellate Court nor Judge Varga disputed Muth's mother was seriously ill preventing Muth from proceeding with the trial, and failed to address or distinguish the decision in *Ullmen,* 67 Ill. App. 3d 519, wherein the Court specifically held the illness of an attorney's immediate family constitutes a valid and sufficient reason for a continuance of the trial.

V. The Defendant's arguments presented in this case were not waived. The Trial Court's decision to try this case in the absence of the defendant and his counsel precluded the ability of the defendant to make objections and constitutes plain error.

Judge Varga ruled, and the Appellate Court agreed, that certain arguments advanced by the defendant were waived. (R 152, L9-11; R 197, L1-6; R 198, L8-13).

In *Hahn v. County of Kane*, 2013 IL App (2d) 120660, the Court said:

> "Waiver is commonly defined as 'the intentional relinquishment of a known right.' *Ryder v. Bank of Hickory Hills*, 146 Ill.2d 98, 104, 165 Ill.Dec. 650, 585 N.E.2d 46 (1991). It may be made by an express agreement or it may be implied from the conduct of the party who is alleged to have waived his right. Id. at 105, 165 Ill.Dec. 650, 585 N.E.2d 46. Implied waiver of a right must be proved by a clear, unequivocal, and decisive act of the party alleged to have committed the waiver. *Id.*

Given all the circumstances in this case, e.g., the life-threatening health condition of defendant's father, his distress over his father's sudden and critical illness precluding a proper state of mind to testify, attorney Muth's mother's serious medical condition requiring her to act as caretaker and frustrating Muth's efforts to represent the defendant unless a continuance is granted, Muth's attempts to obtain a ruling on the defendant's motion for a short continuance of the trial, and Holstein's inability to try the case because he never spoke to the defendant, do not support the elements of waiver. The defendant waived nothing. In addition, Judge Varga's insistence to proceed forward with a jury trial in the absence of the defendant and his attorney deprived the defendant of a fair trial which created a palpable injustice and constitutes plain error. See: *Belfield v Coop*, 8 Ill.2d 293, 313 (1956). Due to the grave illnesses of their family members and Judge Varga's rigid procedures, defendant and his lead attorney were prevented from participating in the trial. As such, defendant obviously could not make contemporaneous objections. However, "[t[he plain error doctrine does permit an appellate court to review errors not properly preserved at the trial level." *In re Marriage of Saheb and Khazal*, 377 Ill.App.3d 615, 627 (1st Dist. 2007). The plain error doctrine may be applied in civil cases where "the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process." *Wilbourn v. Cavalenes*, 398 Ill.App.3d 837, 856 (1st Dist. 2010). The ex-parte trial that occurred resulted in a palpable injustice which not only denied the defendant a fair trial, but no trial at all. These circumstances warrant the application of the plain error doctrine.

In sum, refusal of the trial court to rule on the defendant's emergency motion for a new trial, or, alternatively, grant the defendant sufficient time to obtain a ruling on the motion by the Presiding Judge, and then proceeding to trial in the absence of the defendant and the defendant's counsel, constituted a palpable injustice to the defendant. These circumstances prevented the defendant from his inherent due process right of presenting his defense and arguments to the jury which resulted in an unconscionable and excessive compensatory and punitive damage award. The ends of justice require a difference result and, accordingly, the verdict should be vacated and the defendant granted a new trial.

VI. The Jury Instruction Conference and certain Jury Instructions were improper.

(i) Jury Instruction Conference

Following the tender of proposed jury instructions, the trial court is required to hold an instruction conference, "to settle the instructions and [to] inform counsel of the court's proposed action thereon prior to the arguments to the jury." 735 ILCS 5/2-1107(c). In this case, Judge Varga conducted an improper and wholly one-sided instruction conference ("conference").

A dispute exists as to whether Muth and Holstein requested to participate the conference. While Muth and Holstein contend they did ask to participate, Judge Varga and Voelker insist defense counsel made no such request. (R 105, L3-20). Nevertheless, Judge Varga concedes defense counsel was present while the conference was ongoing. (R 144, L22-23). Judge Varga states that during the conference, Muth "barged in" and that he requested defense counsel "wait a second" until the conference was concluded and the instructions and exhibits were delivered to the jury. (R 147, L14-23). Only after the materials were delivered

to the jury room, did Judge Varga allow Muth and Holstein to approach the bench. (R 148, L2-3). At the hearing on June 5, 2019, Judge Varga denied any duty to retrieve the instructions from the jury to allow Muth an opportunity to review them once she was permitted to approach the bench. (R 149-150, L22-24, 1).

Illinois courts have previously held a trial court's failure to conduct a proper jury instruction conference constitutes reversible error. See, e.g., *People v. O'Banner*, 215 Ill.App.3d 778, 790 (1st Dist. 1991). Defense counsel was undisputably present prior to the termination of the conference. However, the Court directed Muth and Holstein to wait until the conference was concluded and materials delivered to the jury before permitting them to approach the bench, effectively foreclosing their participation. The Court's refusal to allow Muth and Holstein to participate in the conference and to access to the proposed jury instructions is violative of statutory purpose and objective of 735 ILCS 5/2-1107(c) and constitutes reversible error. The error is exacerbated by the court's failure to insist on the presence of a court reporter. When combined with the multiple erroneous actions addressed elsewhere in this brief, the Court's failure to conduct a proper Section 1107(c) conference requires the judgment be vacated and the defendant granted a new trial. The Appellate Court simply responds to all of the above by saying the absence of a transcript precludes review of the issue. As argued above, the trial court should have required the presence of a court reporter.

(ii) Issues Instructions

Implicitly agreeing that the jury instructions constituted reversible error, the Appellate Court held any error was waived. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-100, ¶62).

Jury instructions in civil proceedings in Illinois are governed by Supreme Court Rule 239. According to Rule 239, whenever the Illinois Pattern Jury Instructions (IPI) contains an applicable instruction, that instruction "shall be used, unless the court determines that it does not accurately state the law." Ill. S. Ct. R. 239(a). In the absence of an applicable IPI instruction, any necessary jury instruction "should be simple, brief, impartial, and free from argument." *Id.* "When the question is whether the applicable law was accurately conveyed" the standard of review is *de novo. Studt v. Sherman Health Systems*, 2011 IL 108182, ¶13. "Reversal is warranted if the error resulted in 'serious prejudice,'" to defendant's right to a fair trial. *Id.* at ¶28.

The jury instructions produced from the court file are found in the record at R C659 to R C699. (App. p. A-42 to A-65). Based upon the notations made on the instructions, all the instructions were given, except possibly instructions R C687-690 and R C692 as the notations on these instructions are ambiguous. Plaintiff admitted in her response to defendant's post-trial motion, and Judge Varga confirmed at oral argument on June 5th, that the jury was provided with the modified criminal IPI issues instructions for assault and battery found in the record at R C659-660. (R C813, last ¶;R 152, L17-19;R 153, L2-15; App. p. A-82 to A-83). The use of a modified criminal IPI assault and battery instructions in this trial was reversible error. Defendant included issues instructions in his post-trial

motion for assault and battery which should have been tendered to the jury. (R C 701-707; App. p. A-85 to A-91). The modified criminal IPI assault and battery instructions tendered by the court wholly fail to address elements plaintiff is required to prove in a civil trial, including proximate causation. Moreover, unlike civil issue instructions provided by defendant, plaintiff's issues instructions omit any mention of affirmative defenses and contributory negligence. In the case at bar the defendant had raised the affirmative defenses of consent, self-defense and provocation. (R C720). The use of criminal IPI issue instructions clearly did not accurately convey the applicable law and improperly instructed the jury. See, e.g., *Williams v. Conner*, 228 Ill. App. 3d 350, 364 (5th Dist. 1992) (citing *Grover v. Commonwealth Plaza Condo. Ass'n*, 76 Ill. App. 3d 500, 508 (1st Dist. 1979)). As a result, the jury was not advised of all the elements the plaintiff was required to prove. Further, in addition to being prevented from testifying in his own defense, the jury was also not instructed as to any of defendant's well-pled affirmative defenses. Undoubtedly, the failure to accurately instruct the jury with the applicable law in this instance resulted in serious prejudice to defendant's right to a fair trial. Therefore, the verdict should be vacated and the defendant granted a new trial.

What is before this court is a one-sided jury trial where only the plaintiff testified without the defendant or his counsel being present, and, upon the close of evidence, the jury was instructed with faulty instructions constituting reversible error. Under such circumstances, waiver does not absolve the palpable injustice imposed upon the defendant which resulted in a multi-million dollar verdict.

VII. Compensatory Damages

Plaintiff was awarded $200,000 for pain and suffering, $400,000 for present and future loss of normal life, and $400,000 for present and future emotional distress. (R C418). This $1 million compensatory award for plaintiff's wholly subjective injuries lacks evidentiary support and is clearly excessive. Under Illinois law, the basis for overturning a jury award on appellate review is whether "a proven element of damages was ignored, the verdict resulted from passion or prejudice, or the award bears no reasonable relationship to the loss suffered." *Snelson v. Kamm*, 204 Ill. 2d 1, 37 (2003)(*citing Gill v. Foster*, 157 Ill. 2d 304, 315 (1993)). The object of appellate review "is not to determine whether the record is completely free of error, but to ascertain whether upon the trial there has been such error as might prejudice the rights of a party." *Abruzzo v. City of Park Ridge*, 2013 IL App (1st) 122360, ¶ 55 (*quoting Kosowski v. McDonald Elevator Co.*, 33 Ill. App. 2d 386, 396-97 (3d Dist. 1962)). A reversal of a jury award should occur where the award is beyond the "flexible range of what is reasonably supported by the facts." *Lawler v. MacDuff,* 335 Ill. App. 3d 144, 155 (2d Dist. 2002)(*quoting Guerrero v. City of Chicago*, 117 Ill. App. 3d 348, 352 (1st Dist. 1983)(internal quotations omitted). Reviewing the scant evidence proffered, the jury award of $1 million must be overturned or reduced as it is undoubtedly based upon passion and prejudice inflamed by the allegations of sexual assault and not reasonably supported by the evidence.

The $1 million compensatory award was solely based upon the following evidence, which is correctly characterized by the Appellate Court as "slim." (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-102, ¶71). As a result of the circumstances of this trial as

detailed *supra* on pages 6 and 7 of this brief, the sole testimony heard by the jury was that of the plaintiff herself. Due to the absence of defense counsel, plaintiff was not cross examined, her version of the facts was unchallenged and her credibility was not tested. Thus, the testimonial evidence proffered in support of plaintiff's wholly subjective injury claims was entirely self-serving. The jury was also presented with six pages of Northwestern Memorial Hospital medical records consisting of a report from a facial CT scan, discharge instructions, and a "Notice of Victim's Rights." (R C 832-837). A majority of this exhibit contains no medical information but rather merely identifies the plaintiff as a victim of domestic violence. The entirety of clinical information supporting plaintiff's injuries is limited to "facial trauma," "jaw malocclusion," and "no evidence of fracture." (R C 832-833). This exhibit contains no history plaintiff provided at the hospital and no physician's examination. Notably, this exhibit includes no mention or diagnoses of emotional or mental distress. Plaintiff also submitted into evidence nineteen photographs the plaintiff took of herself which purport to depict bruising, most of which appear to have been taken on the same day. (R C 844-863).

Lastly, plaintiff further proffered into evidence thirty-five text messages purportedly sent by defendant on October 24, 2015 (R C 838-840) and twelve undated text messages (R C 841-843). In her brief, plaintiff not only greatly exaggerates the contents of these text messages, but also relies almost exclusively on text messages that do not exist. Nowhere in the six pages of text messages presented to the jury does defendant threaten "in writing, to kill Doe at some point in the future." (Pl. Br. p. 6, 14). Rather, defendant threatens legal action ("Your going to jail..." (R C 839) and to cut plaintiff off financially by changing locks

on a residence, repossessing her Mercedes, and holding her accountable for charging $14,000 on a card. (R C 839, 842).

(i) The $200,000 Award for Pain and Suffering was Excessive

Based upon the evidence contained in the record and set forth *supra* pertaining to plaintiff's physical injuries, an award of $200,000 for pain and suffering is clearly excessive. "When reviewing an award of compensatory damages for a nonfatal injury, a court may consider, among other things, the permanency of plaintiff's condition, the possibility of future deterioration, the extent of the plaintiff's medical expenses, and the restrictions imposed on the plaintiff by the injuries." *Richardson v. Chapman*, 175 Ill.2d 98, 113-14 (1997). This Court's decision in *Richardson* is instructive. In *Richardson*, plaintiff suffered a laceration to her face which ultimately healed with a small scar, as well as nightmares related to the accident. *Richardson*, 175 Ill.2d at 115. The jury award for the plaintiff included $100,000 for pain and suffering. *Id.* This Court, however, determined the jury's award for pain and suffering was excessive because the plaintiff's physical injuries were minor. *Id.* This Court reasoned that she had been treated and released from the hospital the same day, was off of work for only two weeks, and suffered only minimal scarring as a result of her injuries. *Id.*

In the instant matter, the jury awarded compensatory damages for pain and suffering in the amount of $200,000. (R C418). Despite alleging five separate instances of assault, the only time plaintiff sought any medical treatment was on December 12, 2015. Notwithstanding defendant's position that the December 12th Northwestern Memorial Hospital records were admitted in error, this clinical evidence proffered to support a physical

injury demonstrates only a minor facial injury without any fracture. (R C 832-837). Like the plaintiff in *Richardson*, plaintiff was treated for this minor injury and released the same day. However, unlike the plaintiff in *Richardson*, defendant is aware of no evidence to suggest that plaintiff sustained any permanent scars or other permanent physical injuries.

As the standard for reviewing compensatory damages for a nonfatal injury provided in *Richardson* and cited above makes clear, the focus of the analysis is on the nature of the *injury*, rather than the *mechanism* by which the injury occurred. As demonstrated at oral argument on June 5, 2019, in affirming plaintiff's compensatory award of $1 million, Judge Varga relied solely upon the allegations of the *mechanism* of the injury to support plaintiff's claim of emotional pain and suffering: "The woman was sexually assaulted." (R 177, L7-8); "[I]f a woman comes here and says she was sexually assaulted and the jury believes her, I think that's fair enough..." (R 180, L19-21); "And I think being sexually assaulted by a man to a woman is so severe, you don't need a doctor." (R 182, L1-2). However, the record in this case does not contain any document which demonstrates the nature of the plaintiff's claimed emotional injury, such as depression, anxiety or post-traumatic stress disorder. Moreover, no physician, expert or lay witness testified to corroborate or support plaintiff's self-serving testimony.

In its opinion, the Appellate Court acknowledges the controlling authority and application of *Richardson* in determining whether an award for pain and suffering is excessive. However, the Court wholly failed to address and refute defendant's arguments that the absence of evidence to substantiate the award as required by *Richardson* resulted in an award produced by passion and/or prejudice without any reasonable relationship to the

injuries actually suffered. Like Judge Varga, the court affirmed the $200,000 pain and suffering award by focusing on the fact plaintiff claimed to have been sexually assaulted, rather than considering the actual evidence proffered in support of her injuries. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-102, ¶68). Given the lack of any corroborating evidence of an emotional injury and applying the *Richardson* factors to the evidence supporting plaintiff's physical injury, the jury award of $200,000 for pain and suffering must be overturned as it was clearly based on passion and prejudice inflamed by the allegations of sexual assault and bears no relation to the plaintiff's actual injuries.

(ii) The $400,000 Award for Present and Future Loss of Normal Life was Excessive

Under Illinois law, a "loss of normal life" means "the temporary or permanent diminished ability to enjoy life." *Abruzzo*, 2013 IL App (1st) 122360, ¶ 86. In the case of severe physical injuries, such as the loss of a limb, loss of normal life is typically presumed. *Schandelmeier-Bartels v. Chicago Park Dist.,* 2015 IL App (1st) 133356, ¶ 43 (citing *Hendricks v. Riverway Harbor Service St. Louis, Inc.*, 314 Ill.App.3d 800, 810 (5th Dist. 2000). On the other hand, subjective mental injuries require that the plaintiff request a damage instruction with respect to mental damages. *Id.*

Here, plaintiff was awarded $200,000 for present loss of normal life. (R C418). In the absence of a trial record, defendant is precluded from determining what, if any, evidence was presented by the plaintiff with respect to any loss of normal life. Based upon the evidence in the record set forth *supra* on page 59, plaintiff sustained soft tissue facial injuries and bruising, not the type of physical injury likely to result in a loss of normal life. The

record is devoid of any documentary evidence of any emotional injuries. Based on the available evidence, an award of $200,000 for present loss of normal life is excessive.

As demonstrated in his order of June 6, 2019 (R C 894) and the transcript of the June 5th hearing (R 175-188), Judge Varga ruled that no corroborating expert witness testimony is required to award future damages in the case of a sexual assault. Defendant respectfully submits that the basis of Judge Varga's ruling is based upon a misinterpretation of the law. Under the objective-subjective distinction:

> "[w]here future pain and suffering can be objectively determined from the nature of an injury, the jury may be instructed on future pain and suffering based on lay testimony alone or even in the absence of any testimony on the subject. Where future pain and suffering is not apparent from the injury itself, or is subjective, the plaintiff must present expert testimony that pain and suffering is reasonably certain to occur in the future to justify the instruction." *Maddox v. Rozek*, 265 Ill.App.3d 1007, 1011 (1st Dist. 1994).

While *Maddox* specifically addresses future pain and suffering, defendant submits that the reasoning behind the rule applies as well to claims of future loss of normal life. Like the claim for future pain and suffering addressed by the court in *Maddox*, plaintiff's claim for future of loss of normal life is also entirely subjective and cannot be objectively substantiated. The only evidence proffered to support an award of future loss of normal life was plaintiff's own self-serving testimony. Plaintiff presented no corroborating evidence, including expert testimony, or even any clinical documentation, to define her actual claimed condition and to prove that, as a result of this occurrence, she was reasonably certain to experience a loss of normal life in the future. As provided in *Maddox*, expert testimony was required. Defendant is unaware of any sexual assault exception to the objective-subjective distinction for future damages.

In affirming the $400,000 award for both present loss of normal life and future loss of normal life, the Appellate Court did not distinguish *Maddox* or provide any explanation why the reasoning employed in *Maddox* would only apply to future pain and suffering, rather than to claims for future loss of normal life. Instead, the Court held that the award was sufficiently supported by plaintiff's photographs and defendant's text messages, wholly ignoring the subjective nature of plaintiff's claims and lack of objective supporting evidence. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-102, ¶70). The jury instruction on future loss of normal life should not have been given, no award for future loss of normal life should have been awarded, and an award of $400,000 for both loss of normal life and future loss of normal life must be overturned as it is plainly excessive in light of the purported injuries sustained by plaintiff.

(iii) Infliction of Emotional Distress

One of the essential elements to prevail on a claim for infliction of emotional distress is to prove that defendant's conduct did in fact cause severe emotional distress. *Taliani v. Resurrection*, 2018 IL App (3d) 160327, ¶26. Infliction of emotional distress does not always provide a cause of action. *Id.* at ¶27. "To be actionable, the distress inflicted must be so severe that no reasonable person could be expected to endure it." *Id.* In *Taliani*, the court found that the plaintiff did not prove he suffered severe emotional distress to support the cause of action because he never sought medical or psychological treatment. *Id.* Likewise, plaintiff cannot prove she did in fact suffer severe emotional distress. The record contains no documentary evidence to support plaintiff's claim. The Northwestern medical record makes no mention of any emotional distress. No supporting testimony from an expert or

treating health care professional was presented. The only evidence to support this subjective claim is plaintiff's own self-serving testimony.

Additionally, no jury instruction for future emotional distress should have been tendered and no damages for future emotional distress should have been awarded for the identical reasons as those set forth on pages 63 and 64 *supra* regarding plaintiff's claim for future loss of normal life. Therefore, the defendant adopts, in its entirety, the argument and reasoning found on pages 63 and 64 here with regard to damages for future emotional distress.

In affirming plaintiff's $400,000 award for emotional distress and future emotional distress, the Appellate Court does not address the elements set forth in *Taliani* required to prove infliction of emotional distress and again ignores the subjective nature of the plaintiff's claims, disregarding the rule set forth in *Maddox*. The Court instead finds the "slim" evidence set forth *supra* on pages 59 and 60 sufficient to support an award of $400,000. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-102, ¶71). Given the absence of objective evidence of any severe emotional distress experienced by the plaintiff and certain to be experienced in the future, plaintiff cannot satisfy *Taliani* by proving she did in fact suffer severe emotional distress, let alone such severe emotional distress as to justify an award of this magnitude. As such, the award of $400,000 for these claims must be overturned.

Given the evidence proffered to support plaintiff's claims of pain and suffering, present and future loss of normal life, and present and future emotional distress, an award totaling $1 million in compensatory damages is clearly the product of the passion and prejudice experienced by the jury due to the nature of plaintiff's allegations and bears no

relationship to the injuries proven at trial. Pursuant to the standard set forth in *Snelson*, the $1 million compensatory damage award must be overturned.

VIII. Medical Records Should Not Have Been Admitted

Implicitly admitting the medical records were erroneously admitted, the Appellate Court resolved the issue by declaring the issue was waived by defense counsel not objecting to their admission at trial despite the fact defense counsel were prevented from participating in the trial. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-105, ¶86).

The medical records introduced into evidence (R C 832-837) in support of plaintiff's claim for damages lacked sufficient foundation and were therefore inadmissible. In Illinois, medical records are admissible as an exception to the hearsay rule, provided the requisite foundational requirements are satisfied to qualify them as business records. *Troyan v. Reyes,* 367 Ill.App.3d 729, 733 (3d Dist. 2006). Pursuant to Supreme Court Rule 236, "satisfying foundational requirements to admit business records requires that the party tendering the record establish that the record was made in the regular course of business at or near the time of the event or occurrence." *Solis v. BASF Corp.*, 2012 IL App (1st) 110875, ¶85. The foundational requirements may be satisfied by any person familiar with the business or its mode of operation. *Solis*, 2012 IL App (1st) at ¶85.

In *Jackson ex rel. Jackson v. Reid*, 402 Ill. App. 3d 215 (3d Dist. 2010), plaintiff's medical records were inadmissible as lacking foundation for admission as a business record where plaintiff attempted to admit the records through testimony of her expert, who was unfamiliar with the physician's record keeping practices. *Id.* at 237. Here, plaintiff likewise failed to establish the foundational requirements for her medical records as mandated by

Supreme Court Rule 236. Only plaintiff herself testified at trial. She is not a custodian of records of Northwestern Hospital and therefore unable to lay a proper foundation for the admission of these records. Alternatively, plaintiff could have established the requisite foundation for her medical records under Illinois Rule of Evidence 902(11). Ill. R. Evid. 902(11) provides that a business record is admissible "if accompanied by a written certification of its custodian or other qualified person that the record (a) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters; (b) was kept in the course of the regularly conducted activity; and [c] was made by the regularly conducted activity as a regular practice." No such certification is attached to the Northwestern medical records. Lastly, plaintiff could have obtained a stipulation from the defendant but did not do so.

Plaintiff failed to lay a proper foundation for the admission of her medical records in evidence, said records should never have been published to the jury. In his Order of June 6, 2019, Judge Varga states that "[A]ny error in the admission of medical records is, at best, harmless." (R C894, last ¶). Nothing is further from the truth. The discharge instruction includes "Victim of Domestic Violence" as one of plaintiff's diagnoses and repeats the phrase "domestic violence" in two other places. Further, the record attaches a two-page "Notice of Victim's Rights" which provides information regarding criminal procedures. (R C595-599). Without a doubt, this medical record, published without proper foundation, was inflammatory and unfairly prejudicial. This prejudicial error, in conjunction with all the errors identified in this brief, requires the judgment be vacated and a new trial granted.

IX. The Court Improperly Denied the Defendant's Motion For a Mistrial

A motion for mistrial is a procedural tool designed to discontinue a trial for legal reasons which preclude a verdict and judgment. *Redmond v. Socha*, 216 Ill. 2d 622, 639 (2005). Generally, a mistrial should be granted where an error of such gravity has occurred that it has infected the fundamental fairness of the trial, such that the continuation of the proceeding would defeat the ends of justice. *Bruntjen v. Bethalto Pizza, LLC*, 2014 IL App (5th) 120245, ¶15; *Jackson ex rel. Jackson v. Reid*, 402 Ill. App. 3d 215, 230 (3d Dist. 2010); *Kamp v. Preis*, 332 Ill. App. 3d 1115, 1126 (5th Dist. 2002). "A trial court's denial of a motion for mistrial will not be disturbed unless there has been a clear abuse of discretion." *Bruntjen*, at ¶15.

On January 15, 2019, the defendant presented a motion for a mistrial on the grounds that defendant's due process rights were violated as defendant and defense counsel were unable to attend trial due to extreme circumstances. (R C419). At the time defendant's motion for mistrial was presented, Judge Varga was fully aware that both defendant's father and defense counsel's mother were gravely ill, and that, at the time he began trial, defense counsel, pursuant to his direction, had been absent because she was attempting to present her motion for a continuance to the Presiding Judge. Judge Varga was also fully aware that, without waiting for a ruling on defendant's motion for continuance of the trial, he proceeded to begin and conduct the trial without defense counsel and defendant being present. Despite this knowledge, Judge Varga denied defendant's motion for mistrial and on February 8, 2019, and entered a written order to that effect. (R C447). The improper reasoning set forth

in the order has been refuted in the arguments contained in this brief. The motion for mistrial should have been granted.

The Appellate Court resolved this issue by declaring the defendant was not prejudiced because the defendant and his counsel voluntarily absented themselves from the trial. (*Doe v. Parrillo,* 2020 IL App (1st) 191286, App. p. A-105, ¶¶88-90). In response, the defendant relies on all the arguments presented in this brief supporting his claim that the trial court erred by conducting a jury trial in the absence of the defendant and his counsel.

CONCLUSION

Wherefore, the defendant-appellee, Beau Parrillo, respectfully requests this Court enter an order vacating the judgment entered by the trial court and remand this cause for a new trial. In addition, the defendant requests that, upon remand for trial, the cause be assigned to a trial judge other than Judge Varga. Alternatively, in the event this Court decides not to reverse and remand this cause for trial, the defendant requests the Court affirm the appellate court's reduction of the punitive damage award.

Respectfully submitted,

Ronald F. Neville

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One of Defendant/Appellee's Attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a), is seventy (70) pages.

Ronald F. Neville

Ronald F. Neville

CERTIFICATE OF SERVICE

I certify that on April 7, 2021, I electronically filed the attached Brief and Appendix of Defendant/Appellee Beau Parrillo with the Clerk of the Court for the Illinois Supreme Court, by using the Odyssey eFileIL system. I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL systems, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information and belief.

Jennifer Mann
One of the Attorneys for Defendant-Appellant

No. 126577

IN THE SUPREME COURT OF ILLINOIS

JANE DOE, Plaintiff/Appellant, vs. **BEAU PARRILLO,** Defendant/Appellee.	On Leave to Appeal from the Illinois Appellate Court, First Judicial District, No. 1-19-1286 There Heard on Appeal from the Circuit Court of Cook County, Illinois County Department, Law Division Case No. 2016 L 012247 The Honorable James M. Varga, Judge Presiding

APPENDIX

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4/7/2021 5:40 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

INDEX TO THE APPENDIX

1.
Notice of Appeal

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

5512234

JANE DOE, Plaintiff-Appellee,	)	
v.	)	No. 2016 L 012247
BEAU PARRILLO, Defendant-Appellant.	)	Hon. James M. Varga, Judge Presiding

NOTICE OF APPEAL

An appeal from the Circuit Court of Cook County, Illinois to the Illinois Appellate Court, First District, is taken from the order described below:

1. Court to which appeal is taken:
Appellate Court of Illinois, First District.

2. Name of Appellant:
Beau Parrillo, an individual.

3. Name and Address of Attorneys:

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4. Date of Judgment Order:

Judgment was entered on January 15, 2019, and became final on June 5, 2019, when the trial court denied the Defendant-Appellant's post-trial motion requesting the trial court to vacate the order of January 15, 2019 and grant the Defendant-Appellant a new trial.

5. Nature of the Appeal:

By this appeal, Defendant-Appellant will ask the Appellate Court to reverse the order of January 15, 2019 granting judgment against the Defendant-Appellant for $9,000,000, remand this cause for a new trial, and for such other and further relief as the Appellate Court may deem proper.

6. Nature of Orders appealed from:

Defendant-Appellant, BEAU PARRILLO, is appealing from the orders entered in this case by Judge James M. Varga, as follows:

Order entered on January 15, 2019 granting judgment in favor of the Plaintiff-Appellee, JANE DOE, and against the Defendant-Appellant, BEAU PARRILLO on the jury's verdict of Nine Million ($9,000,000) Dollars, a copy of said order being attached as Exhibit A; and also appeals from the order entered orally by the Court on January 15, 2019 and again on February 8, 2019 in writing denying the Defendant-Appellant's motion for a mistrial, a copy of said written order being attached as Exhibit B, and also appeals from the order entered on June 5, 2019, denying the Defendant-Appellant's post-trial motion requesting the Court vacate the judgment entered on January 15, 2019 and grant the Defendant-Appellant a new trial, a copy of said order being attached as Exhibit C, and also appeals from the order of the trial court entered on June 6, 2019 again denying the Defendant-Appellant's post-trial motion requesting the trial court vacate the judgment entered on January 15, 2019, and grant the Defendant-Appellant a new trial, a copy of said order being

attached as Exhibit D.

Ronald F. Neville
One of the Defendant-Appellant's attorneys

Ronald F. Neville
Neville & Mahoney
221 N. LaSalle St., Suite 2150
Chicago, IL 60601
312-236-2100
Silver-ii@att.net

Anthony Pinelli
Law Offices of Anthony Pinelli
53 West Jackson Blvd., Suite 1215
Chicago, Illinois 60604
312/583-9270
apinelli@pinelli-law.com

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

John Doe

v.

Beau Perrillo

No. 2016L012297

ORDER

This cause coming to be heard on trial, this Court being fully advised in the premises, IT IS HEREBY ORDERED

1. After deliberation, the jury reached a verdict in the amount of one million dollars ($1,000,000) for Plaintiff.
2. Judgment is entered in the amount of $9,000,000 in favor of Plaintiff, Elizabeth Cahill, and against Defendant, Beau Perrillo.

Atty. No.: 48085

Name: Vaelven Litigation Group

Atty. for: Plaintiff

Address: 600 W Jackson Blvd #700

City/State/Zip: Chicago, IL 60661

Telephone: 312 270 5430

ENTERED:

Dated: JAN 15 2019

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Ex. A A-4

C 909 V2

16L12247 Jane Doe /Parrillo Beau

VERDICT A

We, the jury, find for Elizabeth Cahall and against Beau Parrillo. We assess the damages in the sum of $ 1,000,000.00, itemized as follows:

Loss of Normal Life:	$ 200,000.00
Pain and Suffering:	$ 200,000.00
Emotional Distress:	$ 200,000.00
Future Loss of Normal Life:	$ 200,000.00
Future Emotional Distress:	$ 200,000.00
Punitive Damages:	$ [redacted] 8,000,000.00

TOTAL DAMAGES $ 9,000,000.00

ENTERED
JUDGE JAMES M. VARGA-1543
JAN 15 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

CC

A-5

C 910 V2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JANE DOE

V.

BEAU PARRILLO

No. 16L12247

ORDER

This cause coming on call for jury trial, the jury returning a verdict for plaintiff and against defendant, defendant filing a post-judgment motion for mistrial, and the judge being advised in the premises:

IT IS ORDERED that defendant's motion for mistrial is denied.

Defendant had two opportunities to file an emergency motion to continue trial with supporting affidavits: on the day the case was set for trial in Courtroom 2005 and the following day after the case was assigned for jury trial before Judge Varga. Judge Varga advised plaintiff's and defendant's attorneys that he would begin jury selection the day after the case was assigned to him and take a break during jury selection for defendant's attorneys to appear before the Presiding Judge in Courtroom 2005 for presentation of an emergency motion to continue trial.

Not only did defendant's attorneys fail to present an emergency motion to continue trial, one failed to appear for jury selection and one appeared but chose not to participate in jury selection. Neither attorney participated during the jury trial. Defendant's attorneys appeared for the return of the verdict and presentation of the motion for mistrial.

ENTERED

ENTERED:

Dated:

ENTERED
JUDGE JAMES M. VARGA-1483
FEB 08 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge

Judge's No.

EX. B A-6

C 911 V2

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JANE DOE

v.

BEAU PARRILLO

No. 2016L012247

ORDER

THIS CAUSE COMING BEFORE THE COURT ON PLAINTIFF'S POST TRIAL MOTION REQUESTING THE COURT TO VACATE THE JUDGMENT ENTERED IN THIS CAUSE ON 1-15-2019 AND GRANT A NEW TRIAL AND THE DEFENDANT'S MOTION TO SUBSTITUTE BEAU PARRILLO AS DEFENDANT, ALL PARTIES BEING REPRESENTED BY COUNSEL AND THE COURT HAVING REVIEWED THE BRIEFS AND HEARD ARGUMENT BY COUNSEL IT IS ORDERED

1. THE POST TRIAL MOTION IS DENIED FOR THE REASONS SET FORTH IN THE RECORD

2. THE MOTION TO SUBSTITUTE IS GRANTED

Atty. No.: 22701

Name: RON NEVILLE

Atty. for: DEFENDANT

Address: 211 N LA SALLE

City/State/Zip: CHICAGO IL 60601

Telephone: 312 236-2480

ENTERED:

Dated: JUN 05 2019

ENTERED
JUDGE JAMES M. VARGA-1643
JUN 05 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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EX. C A-7

C 912 V2

IN THE CIRCUIT COURT OOF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISIONS

JANE DOE,
Plaintiff
v.

No. 16L12247

BEAU PARRILLO,
Defendant

ORDER

This cause coming on call on Defendant's Post-Trial Motion to Request This Court to Vacate Judgment Entered on January 15, 2019 and Grant a New Trial, partles duly notified, and the Judge advised in the premises;

IT IS ORDERED that Defendant's Post-Trial Motion is denied.

First, plaintiff's counsel is correct. The defense made no objections and tendered no jury instruction. The defense waived all evidentiary rulings by the trial court and jury instructions given by the court.

Nevertheless, the Court will briefly address the defense arguments because they are wrong. The transcript of the hearing contains more specific references. The attorneys made mistakes, not the Court.

Defendant's efforts, through his attorneys, are the most audacious attempt to undermine the judicial process which this Court has seen in over twenty-four years. To frame the hearing, the Court asked one of the defense attorneys if one argument is that the judge failed to protect the integrity of the judicial process. He agreed that was one argument. The

EX.D A-8

C 913 V2

Court asked if another argument was the legal system, here the Law Division, failed to consider the human aspect of litigation. Moreover, at the end of the motion, defense set up the defendant as a victim of the Law Division's march toward case disposition. He agreed it was. The Court noted who is a victim depends upon which side you choose. According to the female plaintiff's testimony, she was the victim of the male defendant who attacked her physically and mentally and sexually assaulted her.

The Court asked defense counsel a series of questions. 1) Is Beau Parrillo a liar? Did Beau Parrillo lie? Did his first affidavit contain a lie? What was the purpose of the first affidavit? The conclusion to draw is Beau Parrillo lied (or did not tell the truth) to seek a trial continuance. The Court asked defense counsel more questions. After affidavit #1 is shown to be a lie, should we believe his second affidavit? Why? With all of these medical conditions of the attorney's and defendant's family members, why was no affidavit by a physician filed? This omission raises suspicion.

The Court moved onto a second area of inquiry. Did Ms. Muth agree to appear in court at 9:30 to start jury selection? Did Ms. Muth agree to start jury selection and seek a continuance in Courtroom 2005 on the 11:00 call, while the judge suspended, paused, or broke jury selection? To both, she answered "Yes," but she later changed her answer. Did Ms. Muth even call 2406? She said she tried; no telephone message was left that the clerk or judge heard. Did Ms. Muth even present an Emergency Motion to Continue Trial in Courtroom 2005? "No," she did not. She had two days to present an Emergency Motion to Continue Trial and failed to do so. The Court held the case for one day. The Court and attorneys agreed to start jury selection the following day and stop selection for Ms. Muth to present her motion on the

11:00 call. Later in the hearing, she changed her answer and said she did not agree to that offer by the Court. The conclusion to draw is Ms. Muth abandoned the case for jury selection. The Court asked Mr. Holstein if he was going to participate; Mr. Holstein said he was not. The defense attorneys abandoned the trial of the case.

The Court moved onto a similar subject. 3) Did Ms. Muth or Mr. Holstein seek to participate during the trial, despite standing in the hallway and looking through the glass doors? Participation during trial means opening statements, examination of witnesses, and closing arguments. The only act Ms. Muth or Mr. Holstein did through the trial was file and argue a motion for mistrial after the jury entered the jury room to begin deliberations. The Court denied the motion. The Order, later dated February 8, 2019, explains the opportunities offered to the defense attorneys and their failure to present an Emergency Motion to Continue Trial and participate during trial. Did Ms. Muth and Mr. Holstein make a conscious decision not to participate during trial? Did they abandon the trial? The Court pressed them: after the Emergency Motion to Continue Trial was not presented and the case remained for trial in Courtroom 2406, what were they going to do? The Court concludes that they walked away from the trial and abandon it.

To summarize the above three subjects, the defendant lied in an affidavit to seek a trial continuance, the defense attorneys failed to follow a well-known and well-understood circuit court rule (General Administrative Order 16-2 discussed below), and the defense attorneys and defendant abandoned the trial. In conclusion the title of defendant's attempt should read, "A Conspiracy to Undermine the Integrity of the Judicial Process - or- How Not to Get a Trial

A-10

C 915 V2

Continuance in the Law Division." First, lie; second, don't follow rules; and third, if the first and second don't work, don't show up for trial.

Point One: Continuance. The Court followed General Administrative Order 16-2, VI. B.: "Motion Procedure for Master Calendar Cases: All motions to continue trial on a case assigned to the Master Calendar Section must be presented to the Presiding Judge of the Law Division or his or her designee on the appropriate Courtroom 2005 motion call." This rule specifically applies to the circumstances of this case; the sentence relied upon by the defense in IX is a general boilerplate statement to appease full circuit judges. As discussed during argument, this Court and other trial courts can hold a case for a day or two, for example, permitting counsel to take an agreed upon evidence deposition. The nature of Ms. Muth's claims of the health of her mother and the health of the defendant's father are the basis of a longer continuance, 30 – 60 days specifically requested by Ms. Muth in the Emergency Motion for Continuance of Trial. According to General Administrative Order 16-2, her motion to continue trial must be presented to the Presiding Judge or his or her designee in Courtroom 2005.

Point Two: Jury Instructions. Although plaintiff's counsel did not note IPI numbers on the marked set of instructions, a number of instructions are drawn from IPI Civil and a number are modified IPI Civil. Because of the facts of this case, intentional, criminal conduct, the modified IPI Civil burden of proof on the issues instruction sufficiently stated the law and did not lead to confusion or prejudice to the defendant. Perfection is not required for jury instructions. The instructions are "simple, brief, impartial, and free from argument," consistent with Supreme Court Rule 239. Contributory negligence and affirmative defenses were not included because no evidence was presented to support them. The instructions were simpler

A-11

C 916 V2

and clearer than the allegations in the complaint. IPI 3.08 was not given because no opinion testimony requiring special knowledge or skill was presented; only plaintiff testified, which could arguably include lay opinion testimony.

Future damages were included on the verdict form because evidence supported that they were reasonably certain to be experienced in the future. The plaintiff's testimony of physical and mental abuse and especially sexual assault by the defendant is severe enough for the jurors to award future damages without the need of an expert witness, such as a psychiatrist or psychologist. The future damages "would be readily apparent to a lay fury from the nature of the injury." Judge James M. Varga, "Pointers for Proving Future Damages," VOL. 103 AUGUST 2015 *Illinois Bar Journal*, p. 41, citing *Stift v. Lizzardo*, 362 Ill.App.3d 1019, 1025-31 (1st Dist. 2005), (citing *Maddox v. Rozek*, 265 Ill.App.3d 1007, 1011 (1st Dist. 1994). The objective-subjective rule is based upon cases involving physical, orthopedic and neurologic, injuries.

Regarding the amounts of compensatory damages, the itemized sums are not unreasonable in light of the plaintiff's testimony. The jury determines the facts from the evidence and the credibility of the witnesses. Obviously, the jurors found her credible and awarded appropriate amounts, especially for a woman who was sexually assaulted.

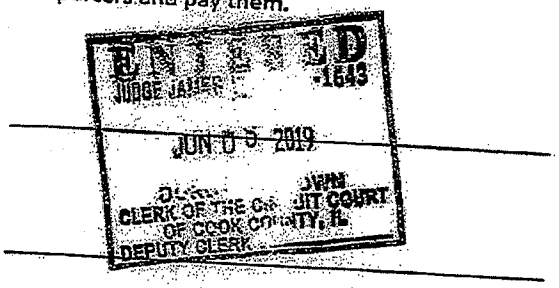
Plaintiff's counsel moved to admit medical records to corroborate plaintiff's testimony. Although now objecting, defendant's counsel also argues the records support the defense argument against future damages. Any error in the admission of the medical records is, at best, harmless.

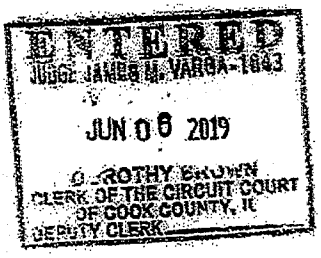
A-12

C 917 V2

Punitive damages were appropriate as well. The testimony established the female plaintiff was sexually assaulted and physically and mentally abused by the male defendant. Eight times compensatory damages reflect the reprehensibility of the defendant's misconduct and the harm suffered by the plaintiff.

According to plaintiff's counsel and the Court, defense counsel never requested to participate in the jury instruction conference. This fact certainly makes sense in light of the defense attorneys' method of operation in avoiding any contact with the trial. Despite defense counsel's argument, judges hold an instruction conference with attorneys who are present and have not abandoned the trial. Despite defense counsel's unsupported argument, judges don't order court reporters; the parties order court reporters and pay them.





A-13

C 918 V2

FILED
6/21/2019 3:28 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2016L012247

5512400

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JANE DOE,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 2016 L 012247
	)	
BEAU PARRILLO,	)	Hon. James M. Varga,
	)	Judge Presiding
Defendant-Appellant.	)	

NOTICE OF FILING OF NOTICE OF APPEAL

TO: Daniel J. Voelker (email address - dvoelker@voelkerlitigationgroup.com) and Olga S. Dmytrieva (email address - olga@voelkerlitigationgroup.com), 600 West Jackson Boulevard, Suite 100, Chicago, IL 60661

PLEASE TAKE NOTICE that on June 21, 2019, the undersigned filed with the Clerk of the Circuit Court of Cook County, the NOTICE OF APPEAL of Defendant-Appellant, BEAU PARRILLO, a copy of which is hereby served upon you.

Respectfully submitted,

Ronald F. Neville

Ronald F. Neville
One of Defendant-Appellant Attorneys

Ronald F. Neville
NEVILLE & MAHONEY
221 North LaSalle Street
Suite 2150
Chicago, IL 60601
(312) 236-2100
Silver-ii@att.net

Anthony Pinelli
Law Offices of Anthony Pinelli
53 W. Jackson
Suite 1215
Chicago, Illinois 60604
312-583-9270
apinelli@pinelli-law.com

A-14

C 919 V2

CERTIFICATE OF FILING/SERVICE BY MAIL AND ELECTRONIC MAIL

The undersigned certifies that this notice and the notice of appeal were served upon the above-named counsel via Regular U.S. Mail by placing said notice of filing and notice of appeal into a properly addressed envelope with sufficient postage and deposited in the mail chute located at 53 W. Jackson, Chicago, Illinois 60604 on June 21, 2019 and also certifies this notice and the notice of appeal were electronically emailed to above-named counsel on June 21, 2019 at the email address listed for each named counsel.

Ronald F. Neville

Ronald F. Neville

A-15

C 920 V2

2.

Judge James Varga Order of February 8, 2019
Denying Defendant's Motion for Mistrial

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JANE DOE

V. No. 16L12247

BEAU PARRILLO

ORDER

This cause coming on call for jury trial, the jury returning a verdict for plaintiff and against defendant, defendant filing a post-judgment motion for mistrial, and the judge being advised in the premises;

IT IS ORDERED that: defendant's ~~post-judgment~~ motion for mistrial is denied. Defendant had two opportunities to file an emergency motion to continue trial with supporting affidavits: on the day the case was set for trial in Courtroom 2005 and the following day after the case was assigned for jury trial before Judge Varga. Judge Varga advised plaintiff's and defendant's attorneys that he would begin jury selection the day after the case was assigned to him and take a break during jury selection for defendant's attorneys to appear before the Presiding Judge in Courtroom 2005 for presentation of an emergency motion to continue trial.

Not only did defendant's attorneys fail to present an emergency motion to continue trial, one failed to appear for jury selection and one appeared but chose not to participate in jury selection. Neither attorney participated during the jury trial. Defendant's attorneys appeared for the return of the verdict and presentation of the motion for mistrial.

ENTERED
JUDGE JAMES M. VARGA-1643
FEB 08 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTERED:

Dated:

Judge Judge's No.

A-16

C 447

3.

Judge James Varga Order of January 15, 2019 Entering Judgment and Verdict Form

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

John Doe

v.

Beau Perrillo

No. 2016 L 012297

ORDER

This cause coming to be heard on trial, this Court being fully advised in the premises, IT IS HEREBY ORDERED:

1. After deliberation, the jury reached a verdict in the amount of one million dollars ($ 9,000,000) for Plaintiff.
2. Judgment is entered in the amount of $ 9,000,000 in favor of Plaintiff, Elizabeth Cahill, and against Defendant, Beau Perrillo.

Atty. No.: 48085

Name: Vaelver Litigation Group

Atty. for: Plaintiff

Address: 600 W Jackson Blvd #625

City/State/Zip: Chicago IL 60661

Telephone: 312 276 5430

ENTERED:

Dated: JAN 15 2019

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EX. A A-17

C 909 V2

16L12247 Jane Doe /Parrillo Beau

VERDICT A

We, the jury, find for Elizabeth Cahall and against Beau Parrillo. We assess the damages in the sum of $ 1,000,000.00, itemized as follows:

Loss of Normal Life:	$ 200,000.00
Pain and Suffering:	$ 200,000.00
Emotional Distress:	$ 200,000.00
Future Loss of Normal Life:	$ 200,000.00
Future Emotional Distress:	$ 200,000.00
Punitive Damages:	$ [redacted] 8,000,000.00

TOTAL DAMAGES $ 9,000,000.00

CE

A-18

C 910 V2

4.
Judge James Varga Order of June 5, 2019
Denying Defendant's Post-Trial Motion

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JANE DOE

v.

BEAU PARRILLO

No. 2016L012247

ORDER

THIS CAUSE COMING BEFORE THE COURT ON DEFENDANT'S POST TRIAL MOTION REQUESTING THE COURT TO VACATE THE JUDGMENT ENTERED IN THIS CAUSE ON 1-15-2019 AND GRANT A NEW TRIAL AND THE DEFENDANT'S MOTION TO SUBSTITUTE BEAU PARRILLO AS A PARTY DEFENDANT, ALL PARTIES BEING REPRESENTED BY COUNSEL AND DUE NOTICE GIVEN, BRIEFS AND HEARD ARGUMENT BY COUNSEL, IT IS ORDERED

(1) THE POST TRIAL MOTION IS DENIED AS TO DEFENDANT AS SET FORTH IN THE RECORD

(2) THE MOTION TO SUBSTITUTE IS GRANTED

Atty. No.: 22001

Name: RAN NEVILLE

Atty. for: DEFENDANT

Address: 211 N LA SALLE

City/State/Zip: CHICAGO IL 60601

Telephone: 312 22- 2120

ENTERED:

ENTERED
JUDGE JAMES M. VARGA-1843
JUN 05 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Dated: JUN 5, 2019

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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A-19

EX. C

C 912 V2

5.
Judge James Varga Order of June 6, 2019
Denying Defendant's Post-Trial Motion

IN THE CIRCUIT COURT OOF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISIONS

JANE DOE,
Plaintiff
v.

No. 16L12247

BEAU PARRILLO,
Defendant

ORDER

This cause coming on call on Defendant's Post-Trial Motion to Request This Court to Vacate Judgment Entered on January 15, 2019 and Grant a New Trial, parties duly notified, and the Judge advised in the premises;

IT IS ORDERED that Defendant's Post-Trial Motion is denied.

First, plaintiff's counsel is correct. The defense made no objections and tendered no jury instruction. The defense waived all evidentiary rulings by the trial court and jury instructions given by the court.

Nevertheless, the Court will briefly address the defense arguments because they are wrong. The transcript of the hearing contains more specific references. The attorneys made mistakes, not the Court.

Defendant's efforts, through his attorneys, are the most audacious attempt to undermine the judicial process which this Court has seen in over twenty-four years. To frame the hearing, the Court asked one of the defense attorneys if one argument is that the judge failed to protect the integrity of the judicial process. He agreed that was one argument. The

EX. D A-20

C 913 V2

Court asked if another argument was the legal system, here the Law Division, failed to consider the human aspect of litigation. Moreover, at the end of the motion, defense set up the defendant as a victim of the Law Division's march toward case disposition. He agreed it was. The Court noted who is a victim depends upon which side you choose. According to the female plaintiff's testimony, she was the victim of the male defendant who attacked her physically and mentally and sexually assaulted her.

The Court asked defense counsel a series of questions. 1) Is Beau Parrillo a liar? Did Beau Parrillo lie? Did his first affidavit contain a lie? What was the purpose of the first affidavit? The conclusion to draw is Beau Parrillo lied (or did not tell the truth) to seek a trial continuance. The Court asked defense counsel more questions. After affidavit #1 is shown to be a lie, should we believe his second affidavit? Why? With all of these medical conditions of the attorney's and defendant's family members, why was no affidavit by a physician filed? This omission raises suspicion.

The Court moved onto a second area of inquiry. Did Ms. Muth agree to appear in court at 9:30 to start jury selection? Did Ms. Muth agree to start jury selection and seek a continuance in Courtroom 2005 on the 11:00 call, while the judge suspended, paused, or broke jury selection? To both, she answered "Yes," but she later changed her answer. Did Ms. Muth even call 2406? She said she tried; no telephone message was left that the clerk or judge heard. Did Ms. Muth even present an Emergency Motion to Continue Trial in Courtroom 2005? "No," she did not. She had two days to present an Emergency Motion to Continue Trial and failed to do so. The Court held the case for one day. The Court and attorneys agreed to start jury selection the following day and stop selection for Ms. Muth to present her motion on the

A-21

C 914 V2

11:00 call. Later in the hearing, she changed her answer and said she did not agree to that offer by the Court. The conclusion to draw is Ms. Muth abandoned the case for jury selection. The Court asked Mr. Holstein if he was going to participate; Mr. Holstein said he was not. The defense attorneys abandoned the trial of the case.

The Court moved onto a similar subject. 3) Did Ms. Muth or Mr. Holstein seek to participate during the trial, despite standing in the hallway and looking through the glass doors? Participation during trial means opening statements, examination of witnesses, and closing arguments. The only act Ms. Muth or Mr. Holstein did through the trial was file and argue a motion for mistrial after the jury entered the jury room to begin deliberations. The Court denied the motion. The Order, later dated February 8, 2019, explains the opportunities offered to the defense attorneys and their failure to present an Emergency Motion to Continue Trial and participate during trial. Did Ms. Muth and Mr. Holstein make a conscious decision not to participate during trial? Did they abandon the trial? The Court pressed them: after the Emergency Motion to Continue Trial was not presented and the case remained for trial in Courtroom 2406, what were they going to do? The Court concludes that they walked away from the trial and abandon it.

To summarize the above three subjects, the defendant lied in an affidavit to seek a trial continuance, the defense attorneys failed to follow a well-known and well-understood circuit court rule (General Administrative Order 16-2 discussed below), and the defense attorneys and defendant abandoned the trial. In conclusion the title of defendant's attempt should read, "A Conspiracy to Undermine the Integrity of the Judicial Process - or- How Not to Get a Trial

A-22

C 915 V2

Continuance in the Law Division." First, lie; second, don't follow rules; and third, if the first and second don't work, don't show up for trial.

Point One: Continuance. The Court followed General Administrative Order 16-2, VI. B.: "Motion Procedure for Master Calendar Cases: All motions to continue trial on a case assigned to the Master Calendar Section must be presented to the Presiding Judge of the Law Division or his or her designee on the appropriate Courtroom 2005 motion call." This rule specifically applies to the circumstances of this case; the sentence relied upon by the defense in IX is a general boilerplate statement to appease full circuit judges. As discussed during argument, this Court and other trial courts can hold a case for a day or two, for example, permitting counsel to take an agreed upon evidence deposition. The nature of Ms. Muth's claims of the health of her mother and the health of the defendant's father are the basis of a longer continuance, 30 – 60 days specifically requested by Ms. Muth in the Emergency Motion for Continuance of Trial. According to General Administrative Order 16-2, her motion to continue trial must be presented to the Presiding Judge or his or her designee in Courtroom 2005.

Point Two: Jury Instructions. Although plaintiff's counsel did not note IPI numbers on the marked set of instructions, a number of instructions are drawn from IPI Civil and a number are modified IPI Civil. Because of the facts of this case, intentional, criminal conduct, the modified IPI Civil burden of proof on the issues instruction sufficiently stated the law and did not lead to confusion or prejudice to the defendant. Perfection is not required for jury instructions. The instructions are "simple, brief, impartial, and free from argument," consistent with Supreme Court Rule 239. Contributory negligence and affirmative defenses were not included because no evidence was presented to support them. The instructions were simpler

A-23

C 916 V2

and clearer than the allegations in the complaint. IPI 3.08 was not given because no opinion testimony requiring special knowledge or skill was presented; only plaintiff testified, which could arguably include lay opinion testimony.

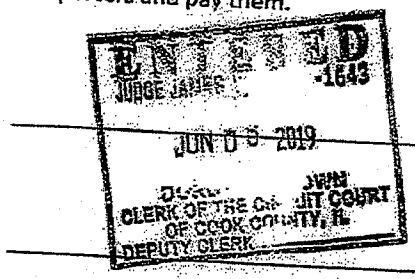
Future damages were included on the verdict form because evidence supported that they were reasonably certain to be experienced in the future. The plaintiff's testimony of physical and mental abuse and especially sexual assault by the defendant is severe enough for the jurors to award future damages without the need of an expert witness, such as a psychiatrist or psychologist. The future damages "would be readily apparent to a lay fury from the nature of the injury." Judge James M. Varga, "Pointers for Proving Future Damages," VOL. 103 AUGUST 2015 *Illinois Bar Journal*, p. 41, citing *Stift v. Lizzardo*, 362 Ill.App.3d 1019, 1025-31 (1st Dist. 2005), (citing *Maddox v. Rozek*, 265 Ill.App.3d 1007, 1011 (1st Dist. 1994). The objective-subjective rule is based upon cases involving physical, orthopedic and neurologic, injuries.

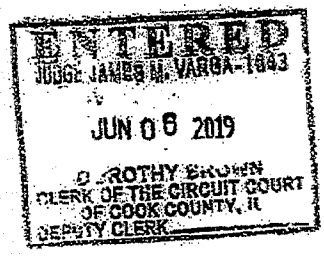
Regarding the amounts of compensatory damages, the itemized sums are not unreasonable in light of the plaintiff's testimony. The jury determines the facts from the evidence and the credibility of the witnesses. Obviously, the jurors found her credible and awarded appropriate amounts, especially for a woman who was sexually assaulted.

Plaintiff's counsel moved to admit medical records to corroborate plaintiff's testimony. Although now objecting, defendant's counsel also argues the records support the defense argument against future damages. Any error in the admission of the medical records is, at best, harmless.

Punitive damages were appropriate as well. The testimony established the female plaintiff was sexually assaulted and physically and mentally abused by the male defendant. Eight times compensatory damages reflect the reprehensibility of the defendant's misconduct and the harm suffered by the plaintiff.

According to plaintiff's counsel and the Court, defense counsel never requested to participate in the jury instruction conference. This fact certainly makes sense in light of the defense attorneys' method of operation in avoiding any contact with the trial. Despite defense counsel's argument, judges hold an instruction conference with attorneys who are present and have not abandoned the trial. Despite defense counsel's unsupported argument, judges don't order court reporters; the parties order court reporters and pay them.





A-25

C 918 V2

6.
Judge James P. Flannery's Standing Order

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

STANDING ORDER
ASSIGNMENT ROOM - ROOM 2005
JUDGE JAMES P. FLANNERY, JR

Courtroom Clerk - Gene - (312) 603-5907
Phyllis - (312) 603-5908

Law Clerks - Michael J. Bradtke - (312) 603-6343
Michael.bradtke@cookcountyil.gov
Redmond McGrath – (312 603-6596
Redmond.McGrath@cookcountyil.gov
Diamond Smith - (312) 603-6583
Diamond.smith@cookcountyil.gov

Court Calls in Courtroom 2005

I. ASSIGNMENT CALL (10:00, Monday-Friday)

- Prove-up Call
- Trial Assignment Call
- Trial Setting Call

II. REGULAR MOTION CALL, M1 Call (10:30, Monday-Friday)

A. Cases on Law Division Master Calendar only

- Motion to set trial, advance for trial, for immediate trial, or continue trial
- Motion to vacate Dismissals for Want of Prosecution entered in Courtrooms 2005 or 2006
- Motion to withdraw as attorney, for cases certified for trial
- Motion to adjudicate liens for cases dismissed in Courtroom 2005
- Motion to enforce settlements of cases dismissed in Courtroom 2005
- Motion affecting final judgments entered by judges no longer in the Law Division

B. All Law Division Cases

- Motion to consolidate and/or transfer as related cases pending in the Law Division pursuant to General Orders No. 12.1 and 22.3
    - A motion to consolidate should include the following information: (1) each case number; (2) where each case is pending and the Judge each case is before; and (3) all upcoming dates
    - Please attach as exhibits the most-recent complaints in each case you are seeking to consolidate or transfer
- Motion to remove from stay calendars
- Motion to transfer Law Division case that is certified for trial to another division or district

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- Motion to reassign a case within the Law Division
- Motion to Satisfy Judgment entered by a judge no longer in the Law Division
- Motion to Distribute Funds upon reaching age of majority or removal of disability

NOTE: Motions regarding case management, discovery matters or dispositive motions are **NOT** heard in courtroom 2005. They are heard by the assigned motion judge.

C. Cases from other Divisions

- Motions to consolidate pursuant to General Order No. 12.1 (Cases in different divisions)
  - Motions should include: (1) each case number; (2) where each case is pending/the Judge the case is before; (3) the calendar where the case is pending; and (4) all upcoming dates
  - Please attach as exhibits the most-recent complaints in each case you are seeking to consolidate or transfer
  - Because there is no way through e-filing (currently) to schedule two cases from different divisions in front of Judge Flannery, these motions need to be scheduled at the Motion desk in 801 if one of the cases is not a law division case.
  - Movants should still e-file the motion to consolidate in the earliest-filed case, but should not select a date before that judge because the motion is properly before Judge Flannery.
- Motions for assignment or reassignment of related cases pending in different departments of the Circuit Court or different divisions of the County Department pursuant to General Order No. 22.3

D. Procedure for Scheduling Motions

- E-filing is now mandatory in the Circuit Court of Cook County. Regular motions are to be scheduled on the M1 motion call for 10:30AM
- To file your motion electronically, go to the Clerk of the Court website at: https://efile.cookcountyuscourts.com/
- Courtesy copies of scheduled motions must be left in the basket at the front of Room 2003 at least three days prior to the hearing

III. TRANSFER-IN CALL (10:30, Wednesday)

- Cases that are transferred to the Law Division from other divisions or districts
- Cases that are returned from the Appellate Court or Supreme Court
- Cases remanded from Federal Court

IV. EMERGENCY MOTION CALL (11:00, Monday-Friday)

Section II (above) motions may be heard on an emergency basis, depending on the circumstances.

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Procedure for Scheduling Emergency Motions:

Emergency motions are heard at 11:00AM. They must be signed up on the sign-up sheet outside Courtroom 2005 between 10:00 and 10:30AM on the day the motion is to be presented. A courtesy copy of the motion should be given to the Law Clerk in Room 2003 immediately after sign-up.

V. ROUTINE MOTIONS (11:00-11:45, Monday-Friday)

- Supreme Court Rule 298 fee waiver petitions (See Section A below)
- Pre-suit Appointment of Special Administrator (See Section B below)
- Pre-suit motions to file under seal or with a fictitious name (See Section C below)

Procedure for Routine Motions:

Routine motions are delivered to Judge Flannery's Law Clerk in Room 2003. Notice should be given as required.

A. Requirements for Fee Waiver Petitions

Petitions for waiver of court fees will be handled pursuant to Cook County General Administrative Order 2018 – 06. Applicants must electronically file all required documents—or obtain an e-filing waiver—before presenting their petitions. Applicants may file using a kiosk in Room 801, or may file elsewhere using the e-filing system. The Applicant will have 14 days from the date of filing in which to present their fee waiver petition. Applicants must bring proof the documents have been e-filed. Fee waiver petitions will be processed daily between 11:00AM and 12:00PM in Courtroom 2005.

Procedure: Bring copies of your: (1) "principal document" [*e.g.*, complaint, appearance, answer, or responsive pleading] with an e-file stamp; and (2) fee waiver petition with an e-file stamp.

If approved, Applicants must bring their signed Order waiving fees to Room 801. The Clerk will process the Order and the conditional filing will be converted into a permanent filing.

If denied, Applicants have 14 days to pay the fee required for filing.

B. Requirements for Appointment of Special Administrator

The Court accepts pre-suit petitions to appoint a special administrator to prosecute Wrongful Death actions on behalf of the deceased individual's next-of-kin. A special administrator can prosecute only wrongful death actions. Complaints alleging any other causes of action, including survival actions, must go to the Probate Division for the appointment of an appropriate representative. Survival Act counts, Nursing Home Care Act counts, and any other count that could have been brought by the decedent are assets of the decedent's estate. An estate must be opened in Probate Court for these cases. Attorneys must go to Judge Coghlan, Presiding Judge of the Probate Division, in Courtroom 1803 to open the estate.

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Procedure: Bring copies of the following documents to Courtroom 2005: (1) petition to appoint a special administrator; (2) proposed complaint; and (3) at least 3 copies of the proposed order appointing the special administrator.

If approved, Petitioners shall file their complaint and petition electronically. A copy of the signed order appointing the special administrator must be attached as an exhibit to the complaint. A handout listing required documents is available online and in chambers.

C. Requirements to File Under Seal or With a Fictitious Name

The Court accepts pre-suit motions to file under seal, file with redactions, or to file with a fictitious name.

Procedure: Bring the following documents to Courtroom 2005: (1) Motion; (2) Proposed 3 copies of the Order; (3) Proposed Complaint; and (4) Unredacted Complaint in a manilla envelope. If approved, the case must be efiled with a copy of the Order as an exhibit to the complaint. A handout with a sample order is available online or in Chambers.

If approved, Movants will be walked to the County Clerk's office in Room 801 to complete the appropriate electronic filing.

VI. MISCELLANEOUS

A. Agreed Orders

Agreed Orders, as below, can be dropped off in room 2005 for later pick-up in room 2003

- Agreed Orders for Pre-Trials before a particular judge
- Agreed Orders for Dismissal of cases that have been certified for trial
- Distribution Orders for cases approved for settlement in Courtroom 2005
- Agreed Orders for Satisfaction and Release of Judgment when the Judge who entered the original order is no longer sitting in the Law Division

B. Briefing Schedules

For a motion that is contested, Judge Flannery may order the parties to enter a briefing schedule and set a hearing date.

Procedure: Parties agree to a briefing schedule. Hearing dates and courtesy copy due dates are given in 2005 Chambers. Courtesy copies of parties' briefs are due in Room 2005 no less than 14 days prior to the hearing date. **Failure to submit courtesy copies on the scheduled date may result in your hearing being stricken.** All courtesy copies must be hard copy.

C. Withdrawing a Motion

i. To withdraw a motion scheduled on the M1 Call, please contact (312) 605-5907
Note: The Motion will not be stricken from the call until the day it is scheduled to be heard.

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ii. To withdraw a contested motion with a briefing schedule, the Court requires an order striking the motion. Orders striking hearing dates can be dropped off or faxed to (312) 603-6622

D. Settlement and Distribution Petitions

Petitions to approve settlement and distribution in Wrongful Death, Survival Actions, and certain personal injury cases can be heard by either Judge Flannery or the judge to which the case was assigned.

Procedure: Settlement petitions do not have to be noticed up and can be delivered to Chambers at any time. Review the joint memorandum of Final Procedures Concerning Settlement of Minors' and Disabled Persons' Personal Injury Cases and Wrongful Death Cases for guidance. The joint memorandum can be found on the Circuit Court website and is also available in chambers.

E. Asbestos Cases (Calendar J1)

- Motion Call: Every other Tuesday at 2:00 PM in Courtroom 2005. The Honorable Judge Clare McWilliams presides over this specialized call, Calendar J1. Courtesy copies are due to Room 2310 14 days prior to the scheduled hearing date
- Emergency Motion Procedure (asbestos docket only): To sign up an emergency motion, call Judge McWilliams' Chambers at 312-603-3633 and schedule the motion with her Law Clerk. Courtesy copies are to be provided to Courtroom 2310
- For asbestos procedures, see the Case Management Order, available on the Chief Judge's website at:
    - http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment/LawDivision/AsbestosLitigation.aspx
- For any other asbestos-related questions, contact Judge McWilliams' Law Clerk, Micha Reeves, at (312) 603-3633

F. Circuit Court of Cook County Website

The Circuit Court of Cook County website at http://www.cookcountycourt.org/ contains information about the circuit court and every division. It contains rules and orders for the Law Division, as well as information about Law Division judges and their court calls.

Updated: March 25, 2019

A-30

7.
Colloquy Between Judge Varga and Ronald F. Neville Regarding the Possibility of a Third Error During the Hearing of June 5, 2019

continuance. There's no way I would do that.

THE COURT: Now you're saying no. Earlier, you said yes; now you're saying no.

MS. MUTH: I --

(Simultaneous inaudible colloquy.)

THE COURT: Kind of like these affidavits.

Okay, go ahead.

MR. NEVILLE: Well, just so we have it on the record, we believe that you didn't balance the equities.

You insisted on going forward with a trial, a one-sided trial which could easily have been continued for one more day so that she could get a ruling on the motion, but you didn't do that.

THE COURT: I held it for a day, and I gave her a chance to go to the 11:00 o'clock call. That's two chances, okay?

MR. NEVILLE: Well, she should have gotten a third.

THE COURT: What, make another -- a third mistake?

MR. NEVILLE: I'm sorry. What?

THE COURT: She made two mistakes, so

should she get a third mistake?

You know, maybe she didn't want to present it. I don't know. Something's -- you know. So give her a third day so she can make a third mistake. Okay. Good reason. Good logic.

Okay. Continue. Let's go.

MR. NEVILLE: With regard to the motion for a continuance, I want to make one last point.

The basis -- you know, you're calling Beau Parrillo a liar and that he lied in his --

THE COURT: It was false.

MR. NEVILLE: That he didn't -- the only thing that was false in it was --

THE COURT: It was a false affidavit.

MR. NEVILLE: The only thing that was false --

THE COURT: He filed a false affidavit.

MR. NEVILLE: -- is that he didn't go to Florida.

THE COURT: And that was false.

MR. NEVILLE: That's right.

THE COURT: And he filed it in the

court, and he wanted to get a continuance. He filed that for use in court. That's serious.

MR. NEVILLE: And we explained the circumstances. We explained the circumstances.

THE COURT: You -- explain it why you lied, then. You didn't explain the circumstances.

MR. NEVILLE: Yeah, we did. In his affidavit and what I wrote, we explained that he was -- his emotions --

THE COURT: It doesn't appear serious to you that somebody comes to court, lies in an affidavit to get a continuance for a judge to rule on, and it doesn't seem serious to you.

MR. NEVILLE: Well, here's the point I want to make, Judge, is that --

THE COURT: Yeah, so I'm making all the mistakes. How about that? How about the plaintiff -- I mean the defendant, lying, under oath.

MR. NEVILLE: The point I want to make, Judge, is that when the motion was -- if the motion had been heard, it would have rested upon the fact that the attorney, the defense attorney's mother was seriously ill. And we have a case exactly on point that says the continuance should have been

granted.

THE COURT: And she made two mistakes and didn't get it to the presiding judge in the law division. I'll keep repeating so long as you keep repeating --

MR. NEVILLE: So while I don't want to minimize the fact that Beau Perillo's indication in the affidavit that he was in Florida when he wasn't, number one, that's been explained, but it doesn't -- it doesn't mean that a continuance should not have been granted. That's the point I want to make, because --

THE COURT: By Judge Flannery.

MR. NEVILLE: Yeah. I mean, according to you, that's --

THE COURT: Yeah, according to me, come on. Every lawyer that practices in the law division -- I've been doing it 24 judges -- 24 years as a judge. I've practiced as a plaintiff's attorney, defense attorney.

Come on. Everybody knows you go to the presiding judge to continue a case. Come on. This -- don't -- you're stretching your credibility badly, okay?

MR. NEVILLE: I'm going to --

THE COURT: I read that specific rule to you, and now you're saying that's wrong? Come on, now. You're losing all your credibility. You know you go to the presiding judge for a continuance.

MR. NEVILLE: No, you don't, Judge.

THE COURT: Oh --

MR. NEVILLE: It doesn't have to be that way.

THE COURT: Oh.

MR. NEVILLE: It does not have to be that way. And I rest on my 48 years of experience in this building. Doesn't have to happen.

You have the power, and you should --

THE COURT: Okay. I'm going to keep repeating. I held it for a day, and I suspended the next day so she can file her emergency motion.

I did not close the door on her. I gave her another day. I gave her an opportunity to go to the proper courtroom. I'm -- you know, that's pretty good for the trial judge.

MR. NEVILLE: Another -- under the circumstances we have, another -- we needed one more day. That's what we needed.

THE COURT: So she could make a third error. We've been through this, but I'm going to keep repeating --

MR. NEVILLE: I don't know why you say there would have been a third error.

THE COURT: Because she couldn't get an emergency motion to continue for two days.

MS. MUTH: Judge, the --

THE COURT: First it was some clerking error with confidential; second was something else. All's I know is, she had two days -- she had two days to get it -- to present, to argue an emergency motion to continue, and she didn't do it.

MR. NEVILLE: Next point --

THE COURT: Yep.

MR. NEVILLE: -- Judge, in our opinion, my opinion, the attorneys did not abandon the defendant. She was trying to get a ruling on her motion to continue. We've explained that. The --

THE COURT: Okay, so she doesn't get a continuance, and so they get together, the three of them, Ms. Muth and Mr. Goldstein and Mr. Parrillo. And so they make a conscious decision, okay? We were unsuccessful in continuing the case. Now what do we

8.

Colloquy between Judge Varga and Ronald F. Neville Regarding General Administrative Order 16-2 During the Hearing of June 5, 2019

denied, we have a question of fact, and that has to be for a jury to decide in this case because a jury was selected.

So there's no issue as to whether there was a meritorious defense. There certainly was.

We've gone over, you know, your position and my position about ruling. We believe that once you were made more aware that the motion had not been ruled upon, you give them some more time. That's what you should have done.

We cite the standing order. And nothing in the standing order precludes a trial inherent power and discretion to enter an order the judge feels is appropriate.

THE COURT: And where does it specifically say, though, that the trial judge -- or presiding judge has to grant continuances? It's in that rule, right? I read it somewhere.

MR. NEVILLE: I just read it, Judge.

THE COURT: No, no. In the rule it says all continuances have to go to the --

MR. NEVILLE: Does it say that? Where?

THE COURT: Okay. Give me the rule. Here it is.

MR. NEVILLE: Under emergency motions?

THE COURT: No. Okay. Let's take our time. Here it is.

Okay, well, 6, motion procedure for master calendar cases, (b), all motions to continue trial in a case assigned to the master calendar section must be presented to the presiding judge of the law division, or his or her designee, on the appropriate Courtroom 2005 motion call.

Then it says motion judges may not set or continue a case for trial.

So I think that's --

MR. NEVILLE: What does it say?

THE COURT: Motion judges may not set or continue a case for trial.

MR. NEVILLE: Motion judges.

THE COURT: I know that. But if you read the sentence right before it, let's not over think things. All motions to continue on a case -- all motions to continue trial on a case assigned to the master calendar section must be presented to the presiding judge of the law division, or his or her

designee on the appropriate Courtroom 2005 motion call. Real simple. Clear as a bell.

MR. NEVILLE: Then the sentence that I read negates that, because it says nothing in the --

THE COURT: Because you know what that is? That's a boilerplate line to appease full-circuit judges. Come on. It's Cook County here.

MR. NEVILLE: It's Cook County?

THE COURT: This is specific. This is specific. This is specific. It applies right to the facts of the case. This is what would apply to the situation, the specific rule, not some general rule. That's basic interpretation. The specific rule applies, and that specifically applies to this case, period, the general rule. No.

Okay. Go ahead.

MR. NEVILLE: We believe, Judge, that you have the inherent power to grant a continuance. It wouldn't matter what's in the standing order, because you are a full-circuit judge, and you have inherent powers.

And you have to deal with -- you had a duty to protect the defendant's rights in this case.

THE COURT: You know, I'm one judge who firmly believes in the rule of law, and there's rules for judges, and I follow the rules, okay? Sorry.

It'd be real frightening if I didn't follow the rules. Holy mo- -- oh, boy, would that be scary. Rule of law is good.

If there's rules for judges, I follow them. You don't want some unbridled judge who thinks out of wherever, this is what I'm going to do because I want to do it, uh-uhm. That's not this judge.

Okay. Go ahead.

MR. NEVILLE: Well, if you follow the rules, then you should have followed the rule that nothing in the standing order precludes trial court's inherent power and discretion to enter an order the judge feels is appropriate.

THE COURT: And I just told the more specific rule applies to this situation.

So we disagree again.

MR. NEVILLE: Okay. We've cited cases that were -- this is with all due respect to your position, Judge.

We believe you had the power and your

belief, then and now, that you did not have the power is an abuse of discretion. It's reversible error. We cited two cases --

THE COURT: Because I'm following a specific rule by the presiding judge of the law division that's been practiced for years, and it's in writing, and it's clear and specific.

Okay, I'm not buying into that argument. Serious. Real weak. But go ahead, make your argument. Continue.

MR. NEVILLE: Well, then I'll move on.

THE COURT: Yeah, let's go. And you can come back another day, because I called down for a case, so I don't have one yet.

Go ahead.

MR. NEVILLE: You did call down for a case?

THE COURT: Yeah. I'm always on trial, except I had an emergency yesterday afternoon.

MR. NEVILLE: Well --

THE COURT: Now where we going?

MR. NEVILLE: We're still on the motion.

THE COURT: All right. Where are we

9.
Plaintiff's Jury Instructions

To sustain a claim of an assault, the Plaintiff must prove the following:

That the defendant knowingly and/or intentionally engaged in conduct which placed Plaintiff in reasonable apprehension of receiving bodily harm or physical contact of an insulting or provoking nature.

Specifically, Plaintiff has to prove by preponderance of evidence the following:

- An intentional attempt or threat to inflict injury on another person,
- Coupled with an apparent ability to cause the harm,
- Which creates a reasonable apprehension of bodily harm or offensive contact in the victim

As long as the victim is placed in fear of imminent contact, no actual physical contact or injury need occur.

If you find from your consideration of all the evidence that this proposition has been proved by preponderance of evidence, you should find for Plaintiff.

If you find from your consideration of all the evidence that this proposition has not been proved, you should find for defendant.

A-42

DEFENDANT'S EXHIBIT M

To sustain the charge of battery, Plaintiff must prove the following proposition:

That the defendant knowingly and/or intentionally caused bodily harm to or made physical contact of an insulting or provoking nature with Plaintiff.

The assailant doesn't have to intend to have physical contact with his victim in order for battery to occur. He must merely intend to cause the imminent apprehension, or fear, of physical harm in his victim. For example, if a defendant merely intended to scare the plaintiff by swinging a baseball bat near him, but the plaintiff was accidentally hit by the bat, the plaintiff would have a case for battery.

If you find from your consideration of all the evidence that this proposition has been proved by preponderance of evidence, you should find for Plaintiff.

If you find from your consideration of all the evidence that this proposition has not been proved by preponderance of evidence, you should find for defendant.

16L12247 / Parrillo Beau
John Doe

15 Gi Ven Hot's

JCB

DO WE NEED TO BREAK DOWN THE COMPENSATORY DAMAGES BY ITEM ON THE VERDICT SHEET.?

1/15/19

Jeanne Dixon / Beth Morrill

16L12247

John Doe / Beau parilla

A-46

C 663

16L12247

Jane Doe / DaRi'lo Beau

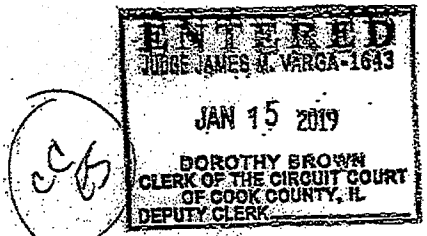
(16) Not Given IPI

CCB

16L12247 / Pgrillo Beau
John Doe

Given 1st '15

(15)



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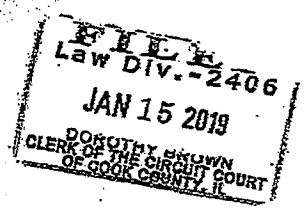


An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement or argument.

16L12247
Jane Doe / Beau Parillo

Now that the evidence has concluded, I will instruct you as to the law and your duties.

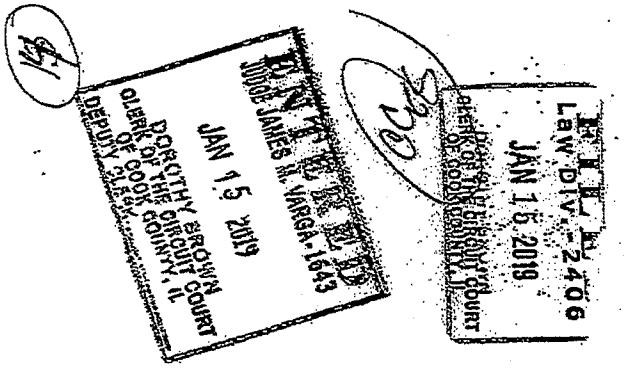
The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. Each party should receive your same fair consideration. My rulings, remarks or instructions do not indicate any opinion as to the facts.

You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

Given mm. Pltf's



A-50
C 667

16L12247
Jane Doe / Beau Parillo

Now that the evidence has concluded, I will instruct you as to the law and your duties.

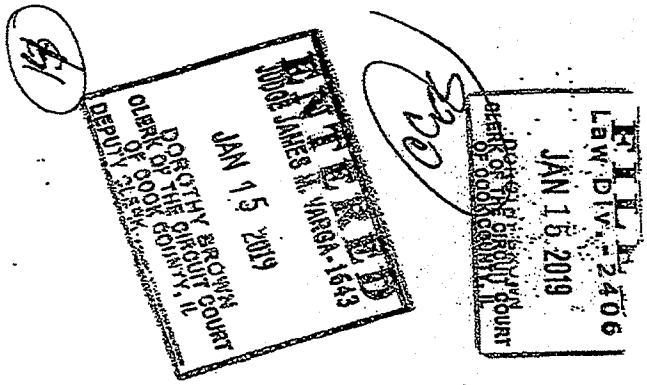
The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. Each party should receive your same fair consideration. My rulings, remarks or instructions do not indicate any opinion as to the facts.

You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

Given non-IPI's



A-51
C 668

A fact or a group of facts, may, based on logic and common sense, lead you to a conclusion as to other facts. This is known as circumstantial evidence. A fact may be proved by circumstantial evidence. Circumstantial evidence is entitled to the same consideration as any other type of evidence.

A-52
C 669

Loss of a normal life experienced and reasonably certain to be experienced in the future.

A-53

C 670

The pain and suffering experienced and reasonably certain to be experienced as a result of the injuries.

A-54

C 671

A person commits the offense of assault when he engages in conduct which places another person in reasonable apprehension of receiving bodily harm or physical contact of an insulting or provoking nature.

To sustain a claim of an assault, the Plaintiff must prove the following:

That the defendant knowingly and/or intentionally engaged in conduct which placed Plaintiff in reasonable apprehension of receiving bodily harm or physical contact of an insulting or provoking nature.

Specifically, Plaintiff has to prove by preponderance of evidence the following:

- An intentional attempt or threat to inflict injury on another person,
- Coupled with an apparent ability to cause the harm,
- Which creates a reasonable apprehension of bodily harm or offensive contact in the victim

As long as the victim is placed in fear of imminent contact, no actual physical contact or injury need occur.

If you find from your consideration of all the evidence that this proposition has been proved by preponderance of evidence, you should find for Plaintiff.

If you find from your consideration of all the evidence that this proposition has not been proved, you should find for defendant.

A plaintiff may recover for battery where the defendant intentionally acted to cause harmful or offensive contact with the plaintiff.

To sustain the charge of battery, Plaintiff must prove the following proposition:

That the defendant knowingly and/or intentionally caused bodily harm to or made physical contact of an insulting or provoking nature with Plaintiff.

The assailant doesn't have to intend to have physical contact with his victim in order for battery to occur. He must merely intend to cause the imminent apprehension, or fear, of physical harm in his victim. For example, if a defendant merely intended to scare the plaintiff by swinging a baseball bat near him, but the plaintiff was accidentally hit by the bat, the plaintiff would have a case for battery.

If you find from your consideration of all the evidence that this proposition has been proved by preponderance of evidence, you should find for Plaintiff.

If you find from your consideration of all the evidence that this proposition has not been proved by preponderance of evidence, you should find for defendant.

When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

When I use the expression "willful and wanton conduct" I mean a course of action which shows actual or deliberate intention to harm or which, if not intentional, shows an utter indifference to or conscious disregard for a person's own safety.

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate Plaintiff for any of the following elements of damages proved by the evidence to have resulted from the wrongful conduct of the Defendant, taking into consideration (the nature, extent and duration of the injury.)

Elements of Damages:

Loss of Normal Life:

Pain and Suffering:

Emotional Distress

Future Loss of Normal Life

Future Emotional Distress

Punitive Damages:

When I use the expression "loss of a normal life", I mean the temporary or permanent diminished ability to enjoy life. This includes a person's inability to pursue the pleasurable aspects of life.

The pain and suffering experienced and reasonably certain to be experienced as a result of the injuries.

In addition to compensatory damages, the law permits you under certain circumstances to award punitive damages. If you find that Beau Parrillo conduct was willful and wanton and proximately caused injury and damages to the plaintiff, and if you believe that justice and the public good require it, you may award an amount of money which will punish Beau Parrillo and discourage him and others from similar conduct.

In arriving at your decision as to the amount of punitive damages, you should consider the following three questions. The first question is the most important to determine the amount of punitive damages:

1. How reprehensible was Beau Parrillo's conduct? On this subject, you should consider the following:

a) The facts and circumstances of defendant's conduct;
b) The vulnerability of the plaintiff;
c) The duration of the misconduct;
d) The frequency of defendant's misconduct;
e) Whether the harm was physical as opposed to economic;
f) Whether defendant tried to conceal the misconduct;

2. What actual and potential harm did defendant's conduct cause to the plaintiff in this case?

3. What amount of money is necessary to punish defendant and discourage defendant and others from future wrongful conduct in light of defendant's financial condition?

The amount of punitive damages must be reasonable and in proportion to the actual and potential harm suffered by the plaintiff.

VERDICTS

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

The verdict must be unanimous.

Forms of verdict are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form of verdict and return it into Court. The verdict should be signed by each of you. You should not write or mark upon this or any of the other instructions given you by the Court.

If you find for the Elizabeth Cahall against Beau Parrillo, then you should use the form of Verdict A.

If you find for Beau Parrillo against Elizbeth Cahall, then you should use the form of Verdict B.

16L12247 Jane Doe /Parrillo Beau

VERDICT A

We, the jury, find for Elizabeth Cahall and against Beau Parrillo. We assess the damages in the sum of $ 1,000,000.00, itemized as follows:

Loss of Normal Life:	$ 200,000.00
Pain and Suffering:	$ 200,000.00
Emotional Distress:	$ 200,000.00
Future Loss of Normal Life:	$ 200,000.00
Future Emotional Distress:	$ 200,000.00
Punitive Damages:	$ [redacted] 8,000,000.00

TOTAL DAMAGES $ 9,000,000.00

ENTERED
JUDGE JAMES M. VARGA-1643
JAN 15 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY

CE

Ellen Woernle

Theresa R. Villanueva

Judith Bavlsik

A-66
C 683

VERDICT B

We, the jury, find for Beau Parrillo and against Elizabeth Cahall.

A-67

C 684

16L12247
Jane Doe / Beau Parillo

Now that the evidence has concluded, I will instruct you as to the law and your duties.

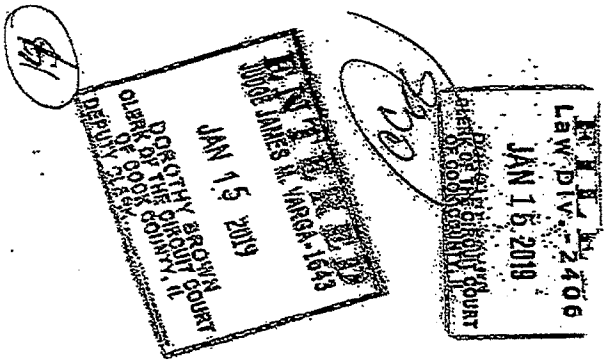
The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. Each party should receive your same fair consideration. My rulings, remarks or instructions do not indicate any opinion as to the facts.

You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

Given mm. Tr's



A-68
C 685

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate Plaintiff for any of the following elements of damages proved by the evidence to have resulted from the wrongful conduct of the Defendant, taking into consideration (the nature, extent and duration of the injury.)

Elements of Damages:

Loss of Normal Life:

Pain and Suffering:

Emotional Distress

Future Loss of Normal Life

Future Emotional Distress

Punitive Damages:

16L 12247
JOHN DOE

Bean
Parillo

Preliminary Cautionary Instructions

[1] Now that the evidence has concluded, I will instruct you as to the law and your duties.

[2] The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

[3] It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. [Each party, whether a [(i.e., corporation, partnership, etc.)] or an individual, should receive your same fair consideration.] My rulings, remarks or instructions do not indicate any opinion as to the facts.

[4] You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

[5] You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

[6] You should not do any independent investigation or research on any subject relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[7] For example, you must not use the Internet, [including Google,] [Wikipedia,] [[(insert current examples)]], or any other sources that you might use every day, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the parties, witnesses, lawyers, and judge.

[8] During the course of the trial, do not discuss this case with anyone—not even your own families or friends, and also not even among yourselves—until at the end of the trial when you have retired to the jury room to deliberate on your verdict. Even though this is hard to do, it will be a violation of these instructions and your oath if you discuss the case with anyone else.

[9] You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including [blogs,] [chat-rooms,] or [[(insert current examples)]], or any social- networking websites, such as [Twitter], [Facebook] or [[(insert current examples)]], or any other means.

FILED
Law Div.-2406
JAN 15 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ENTERED
JUDGE JAMES M. VARGA 1063
JAN 15 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

15 Given

A-70
C 687

16L 12247
JOHN DOE

Beau Parillo

Preliminary Cautionary Instructions

3001

[1] Now that the evidence has concluded, I will instruct you as to the law and your duties.

[2] The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

[3] It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. ~~[Each party, whether a [(i.e., corporation, partnership, etc.)] or an individual, should receive your same fair consideration.]~~ My rulings, remarks or instructions do not indicate any opinion as to the facts.

[4] You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

[5] You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

15 Given 15

[6] You should not do any independent investigation or research on any subject relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[7] For example, you must not use the Internet, [including Google,] [Wikipedia,] [[(insert current examples)]], or any other sources that you might use every day, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the parties, witnesses, lawyers, and judge.

[8] During the course of the trial, do not discuss this case with anyone—not even your own families or friends, and also not even among yourselves—until at the end of the trial when you have retired to the jury room to deliberate on your verdict. Even though this is hard to do, it will be a violation of these instructions and your oath if you discuss the case with anyone else.

[9] You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including [blogs,] [chat-rooms,] or [[(insert current examples)]], or any social- networking websites, such as [Twitter], [Facebook] or [[(insert current examples)]], or any other

FILED
Law Div.-2406
JAN 15 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ENTERED
JUDGE JAMES M. VARGA-1043
JAN 15 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

A-71
C 688

[10] You cannot use any electronic devices or services to communicate about this case, and this includes [cell-phones,] [smart-phones,] [lap-tops,] [the Internet,] [[(insert current examples)]] and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

[11] The reason for these instructions is that your verdict must be based only on the evidence presented in this courtroom and the law I [will provide] [have provided] to you in my instructions. It would be unfair to the parties and a violation of your oath to base your decision on information from outside this courtroom. You should feel free to remind each other that your verdict is to be based only on the evidence admitted in court and that you cannot use information from any other sources. If you become aware of any violation of these instructions, it is your legal duty to report this to me immediately.

[12] Disobeying these instructions could cause a mistrial, meaning all of our efforts have been wasted and we would have to start over again with a new trial. If you violate these instructions you could be found in contempt of court.

[13] Pay close attention to the testimony as it is given. At the end of the trial you must make your decision based on what you recall of the evidence. You will not receive a written transcript of the testimony when you retire to the jury room.

[14] An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement or argument.

Plaintiff's Jury Instruction No. 1

Accepted ____ Rejected ____ Accepted Modified ____

A-72

C 689

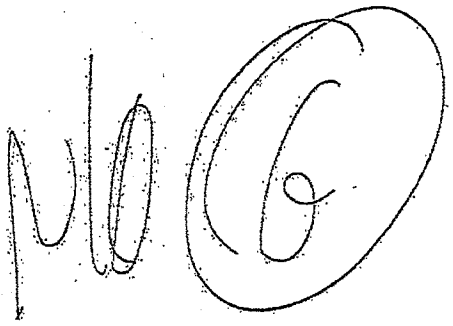
Issues In The Case

An issue instruction tells the jury what points are in controversy between the parties and thereby simplifies their task of applying the law to the facts—a task made more difficult in many instances after jurors have participated in several types of cases.

Plaintiff's Jury Instruction No. 2

Accepted ____ Rejected ____ Accepted Modified ____

A fact or a group of facts, may, based on logic and common sense, lead you to a conclusion as to other facts. This is known as circumstantial evidence. A fact may be proved by circumstantial evidence. For example, if you are in a building and a person enters who is wet and is holding an umbrella, you might conclude that it was raining outside. Circumstantial evidence is entitled to the same consideration as any other type of evidence.



Plaintiff's Jury Instruction No. 3

Accepted ____ Rejected ____ Accepted Modified ____

A-74

C 691

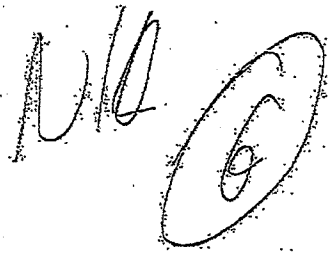
When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the

Plaintiff's Jury Instruction No.4

Accepted ___ Rejected ___ Accepted Modified ___

Definition Of Assault

A person commits the offense of assault when he engages in conduct which places another person in reasonable apprehension of receiving bodily harm or physical contact of an insulting or provoking nature.



Plaintiff's Jury Instruction No. 5

Accepted ____ Rejected ____ Accepted Modified ____

Issue In Assault

To sustain a claim of an assault, the Plaintiff must prove the following:

That the defendant knowingly and/or intentionally engaged in conduct which placed Plaintiff in reasonable apprehension of receiving bodily harm or physical contact of an insulting or provoking nature.

Specifically, Plaintiff has to proof by preponderance of evidence the following:

- An intentional attempt or threat to inflict injury on another person,
- Coupled with an apparent ability to cause the harm,
- Which creates a reasonable apprehension of bodily harm or offensive contact in the victim

As long as the victim is placed in fear of imminent contact, no actual physical contact or injury need occur.

If you find from your consideration of all the evidence that this proposition has been proved by preponderance of evidence, you should find for Plaintiff.

If you find from your consideration of all the evidence that this proposition has not been proved, you should find the defendant ~~not guilty~~.

Plaintiff's Jury Instruction No. 6

Accepted ____ Rejected ____ Accepted Modified ____

Definition Of Battery

A plaintiff may recover for ~~civil assault and~~ battery where the defendant intentionally acted to cause harmful or offensive contact with the plaintiff.

Plaintiff's Jury Instruction No. 7

Accepted ____ Rejected ____ Accepted Modified ____

Issue In Battery

To sustain the charge of battery, Plaintiff must prove the following proposition:

That the defendant knowingly and/or intentionally caused bodily harm to or made physical contact of an insulting or provoking nature with Plaintiff.

The assailant doesn't have to intend to have physical contact with his victim in order for civil battery to occur. He must merely intend to cause the imminent apprehension, or fear, of physical harm in his victim. For example, if a defendant merely intended to scare the plaintiff by swinging a baseball bat near him, but the plaintiff was accidentally hit by the bat, the plaintiff would have a case for civil battery.

If you find from your consideration of all the evidence that this proposition has been proved by preponderance of evidence, you should find for Plaintiff.

If you find from your consideration of all the evidence that this proposition has not been proved by preponderance of evidence, you should find the defendant not guilty.

Plaintiff's Jury Instruction No. 8

Accepted ____ Rejected ____ Accepted Modified ____

Meaning Of Burden Of Proof

When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

Plaintiff's Jury Instruction No. 9

Accepted ____ Rejected ____ Accepted Modified ____

14.00 Willful and Wanton Conduct

14.01 Willful and Wanton Conduct--Definition

When I use the expression "willful and wanton conduct" I mean a course of action which [shows actual or deliberate intention to harm] [or which, if not intentional,] [shows an utter indifference to or conscious disregard for a person's own safety.

Plaintiff's Jury Instruction No. 10

Accepted ____ Rejected ____ Accepted Modified ____

10.
Plaintiff's Issues Instructions for Assault and Battery Provided to Jury

To sustain a claim of an assault, the Plaintiff must prove the following:

That the defendant knowingly and/or intentionally engaged in conduct which placed Plaintiff in reasonable apprehension of receiving bodily harm or physical contact of an insulting or provoking nature.

Specifically, Plaintiff has to prove by preponderance of evidence the following:

- An intentional attempt or threat to inflict injury on another person,
- Coupled with an apparent ability to cause the harm,
- Which creates a reasonable apprehension of bodily harm or offensive contact in the victim

As long as the victim is placed in fear of imminent contact, no actual physical contact or injury need occur.

If you find from your consideration of all the evidence that this proposition has been proved by preponderance of evidence, you should find for Plaintiff.

If you find from your consideration of all the evidence that this proposition has not been proved, you should find for defendant.

A-82

DEFENDANT'S EXHIBIT M

C 659

To sustain the charge of battery, Plaintiff must prove the following proposition:

That the defendant knowingly and/or intentionally caused bodily harm to or made physical contact of an insulting or provoking nature with Plaintiff.

The assailant doesn't have to intend to have physical contact with his victim in order for battery to occur. He must merely intend to cause the imminent apprehension, or fear, of physical harm in his victim. For example, if a defendant merely intended to scare the plaintiff by swinging a baseball bat near him, but the plaintiff was accidentally hit by the bat, the plaintiff would have a case for battery.

If you find from your consideration of all the evidence that this proposition has been proved by preponderance of evidence, you should find for Plaintiff.

If you find from your consideration of all the evidence that this proposition has not been proved by preponderance of evidence, you should find for defendant.

11.
Plaintiff's Burden of Proof Instructions Provided to Jury

When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

12.
Defendant's Issues Instructions for Assault and Battery included in his Post-Trial Motion which should have been tendered to the Jury

Return Date: No return date scheduled
Hearing Date: No hearing scheduled
Courtroom Number: No hearing scheduled
Location: No hearing scheduled

FILED
3/13/2019 9:52 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2016L012247

20.01.01 Issues Made by the Pleadings - Willful and Wanton Counts

The plaintiff's complaint consists of five counts. The issues to be decided by you under Count I of the complaint are as follows:

The plaintiff claims that on October 5, 2015 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant struck the plaintiff;

2. Defendant choked the plaintiff around her neck with his hands; and

3. Defendant made physical contact with the plaintiff of an insulting or provoking nature.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant further denies that the plaintiff was injured or sustained damages.

Turning now to Count II of the complaint the issues to be decided by you under that Court are as follows:

The plaintiff claims that on November 5, 2015 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

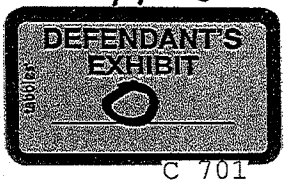
1. Defendant struck the plaintiff; and

2. Defendant made physical contact with the plaintiff of an insulting or provoking nature.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

A-85



The defendant further denies that the plaintiff was injured or sustained damages.

Turning now to Count III of the complaint the issues to be decided by you under that Count are as follows:

The plaintiff claims that on November 9, 2015 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant grabbed the plaintiff using his hands with force and shoved her against the wall; and

2. Defendant made physical contact with the plaintiff of an insulting and provoking nature.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant further denies that the plaintiff was injured or sustained damages.

Turning now to Count IV of the complaint the issues to be decided by you under that Count are as follows:

The plaintiff claims that on December 12, 2015 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant physically restrained plaintiff with force and violence against her will;

2. Defendant struck plaintiff in her face and mouth with a closed fist;

3. Defendant struck plaintiff in the head with a glass coffee maker;

4. Defendant strangled the plaintiff around her neck with his hands; and

5. Defendant made physical contact with the plaintiff of an insulting and provoking nature.

The plaintiff further claims that one or more of the foregoing was a proximate cause of

her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant further denies that the plaintiff was injured or sustained damages.

Turning now to Count V of the complaint the issues to be decided by you under that Count are as follows:

The plaintiff claims that on March 23, 2016 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant physically restrained plaintiff with force and violence against her will;

2. Defendant strangled plaintiff around her neck with his hands; and

3. Defendant sexually assaulted and raped plaintiff.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant further denies that the plaintiff was injured or sustained damages.

IPI Civil No. 20.01.01

_____ Given

_____ Given as Amended

_____ Refused

_____ Withdrawn

A-87

C 703

20.01.01 Issues Made by the Pleadings - Willful and Wanton Counts

The plaintiff's complaint consists of five counts. The issues to be decided by you under Count I of the complaint are as follows:

The plaintiff claims that on October 5, 2015 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant struck the plaintiff;

2. Defendant choked the plaintiff around her neck with his hands; and

3. Defendant made physical contact with the plaintiff of an insulting or provoking nature.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant also sets up the following affirmative defenses:

1. Defendant was acting in self-defense; and

2. Plaintiff provoked the defendant.

The plaintiff denies that defendant was acting in self-defense and denies that she provoked the defendant.

The defendant further denies that the plaintiff was injured or sustained damages.

Turning now to Count II of the complaint the issues to be decided by you under that Court are as follows:

The plaintiff claims that on November 5, 2015 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant struck the plaintiff; and

2. Defendant made physical contact with the plaintiff of an insulting or

provoking nature.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant also sets up the following affirmative defenses:

1. Defendant was acting in self-defense; and

2. Plaintiff provoked the defendant.

The plaintiff denies that defendant was acting in self-defense and denies that she provoked the defendant.

The defendant further denies that the plaintiff was injured or sustained damages.

Turning now to Count III of the complaint the issues to be decided by you under that Count are as follows:

The plaintiff claims that on November 9, 2015 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant grabbed the plaintiff using his hands with force and shoved her against the wall; and

2. Defendant made physical contact with the plaintiff of an insulting and provoking nature.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant also sets up the following affirmative defenses:

1. Defendant was acting in self-defense; and

2. Plaintiff provoked the defendant.

The plaintiff denies that defendant was acting in self-defense and denies that she provoked the defendant.

The defendant further denies that the plaintiff was injured or sustained damages.

Turning now to Count IV of the complaint the issues to be decided by you under that Count are as follows:

The plaintiff claims that on December 12, 2015 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant physically restrained plaintiff with force and violence against her will;

2. Defendant struck plaintiff in her face and mouth with a closed fist;

3. Defendant struck plaintiff in the head with a glass coffee maker;

4. Defendant strangled the plaintiff around her neck with his hands; and

5. Defendant made physical contact with the plaintiff of an insulting and provoking nature.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant also sets up the following affirmative defenses:

1. Defendant was acting in self-defense; and

2. Plaintiff provoked the defendant.

The plaintiff denies that defendant was acting in self-defense and denies that she provoked the defendant.

The defendant further denies that the plaintiff was injured or sustained damages.

Turning now to Count V of the complaint the issues to be decided by you under that Count are as follows:

The plaintiff claims that on March 23, 2016 she was injured and sustained damage and that the conduct of the defendant was willful and wanton in one or more of the following respects:

1. Defendant physically restrained plaintiff with force and violence against her will;

2. Defendant strangled plaintiff around her neck with his hands; and

3. Defendant sexually assaulted and raped plaintiff.

The plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The defendant denies that he did any of the things claimed by the plaintiff, denies that he was willful and wanton in doing any of the things claimed by the plaintiff, and denies that any claimed act or omission on the defendant's part was a proximate cause of the plaintiff's claimed injuries.

The defendant also sets up the following affirmative defenses:

1. Defendant was acting in self-defense;

2. Plaintiff provoked the defendant; and

3. Plaintiff consented to sexual contact with the defendant.

The plaintiff denies that defendant was acting in self-defense, denies that she provoked the defendant, and denies that she consented to sexual contact with the defendant.

The defendant further denies that the plaintiff was injured or sustained damages.

IPI Civil No. 20.01.01

_____ Given

_____ Given as Amended

_____ Refused

_____ Withdrawn

13.
***Doe v. Parrillo*, 2020 IL App (1st) 191286**
Decided September 28, 2020

No. 1-19-1286
APPELLATE COURT OF ILLINOIS FIRST DISTRICT First Division

Doe v. Parrillo

2020 IL App (1st) 191286
Decided Sep 28, 2020

No. 1-19-1286

09-28-2020

JANE DOE, Plaintiff-Appellee, v. BEAU PARRILLO Defendant-Appellant.

Attorneys for Appellant: Ronald F. Neville, Terence J. Mahoney, and Jennifer Mann, of Neville & Mahoney, of Chicago, for appellant. Attorneys for Appellee: Daniel J. Voelker, of Voelker Litigation Group, of Chicago, for appellee.

JUSTICE HYMAN delivered the judgment of the court, with opinion.

Appeal from the Circuit Court of Cook County.

No 16 L 12247

Honorable James Michael Varga, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court, with opinion.
Presiding Justice Griffin and Justice Walker concurred in the judgment and opinion.

OPINION

¶ 1 In every matter an attorney makes a countless number of choices: some tactical and some inconsequential, some immediate and some prospective, some deliberative and well-informed and some hasty and ill-informed. Together the combination of choices drive the matter toward resolution. Counsel for defendant chose to let the jury trial proceed without their participation or a court reporter. Unfortunately for the defendant, these and other choices led to a multi-million-dollar verdict. Different choices might have led to a different result. In cases like this case, we do not serve as a safety net for bad choices.

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¶ 2 Jane Doe sued Beau Parrillo for allegedly physically and sexually assaulting her. The evening before trial, one of Parrillo's counsel sought a 30-day to 60-day continuance, claiming her mother had a medical emergency and two unnamed witnesses were unavailable. The day of trial she added another basis—an affidavit from Parrillo stating that he had traveled to Florida to be with his ailing father. The trial judge refused to hear the motion under a local rule giving the presiding judge authority over continuances of that length. Although Parrillo's counsel had opportunities to appear before the presiding judge, counsel failed to do so. Trial proceeded without Parrillo and his counsel, though counsel could have appeared. The jury awarded Doe $1 million in compensatory damages and $8 million in punitive damages. After trial, Parrillo admitted that his affidavit contained falsehoods, including that he remained in Chicago during the trial. Nevertheless, he asked the trial court to vacate the judgment and grant him a new trial. The trial court declined.

¶ 3 Parrillo claims the trial court abused its discretion by (i) refusing to rule on his motion for a continuance or allowing him to obtain a ruling from the presiding judge and (ii) conducting a jury trial in Parrillo's absence and without a court reporter. He also asserts the trial court committed reversible error by (i) conducting a jury

instructions conference without his attorney present, (ii) tendering improper jury instructions, (iii) improperly admitting medical records, and (iv) denying his motion for a mistrial. Finally, Parrillo contends the $9 million award is excessive. Parrillo asks us to vacate the judgment and remand for a new trial.

¶ 4 We find that the court did not abuse its discretion in declining to give Parrillo more time to seek a continuance. Also, the decision to hold the trial in absence of Parrillo and his counsel did not violate Parrillo's due process rights or present grounds for a mistrial because he and his attorneys could have participated but voluntarily declined. Because his attorneys did not

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participate, Parrillo waived alleged evidentiary errors and errors in the jury instructions. Finally, we reverse the $8 million punitive damages award as excessive and reduce it to $1 million.

¶ 5 Background

¶ 6 It is difficult to discern exactly what occurred in this proceeding between January 13, when Parrillo first sought a continuance and January 15, when the jury entered its verdict. This is due in no small part to the absence of a trial transcript. We rely primarily on the transcript and documents from the posttrial hearing to piece together what transpired.

¶ 7 Doe's Complaint

¶ 8 Doe filed her initial five-count complaint on December 15, 2016, alleging that between October 5, 2015 and December 12, 2015, her former boyfriend, Parrillo, assaulted her four times by choking her, striking her with a closed fist in the face and mouth, and hitting her in the head with a glass carafe. She also alleged that on March 23, 2016, Parrillo forcibly restrained her while sexually assaulting her. Doe amended her complaint to request punitive damages in addition to compensatory damages. Parrillo denied all the allegations.

¶ 9 January 13

¶ 10 On January 7, 2019, after several years of discovery and delays, the trial court entered an order certifying the case as ready for trial on January 14. Parrillo's attorney, Allison Muth, was present in court and did not object. Then on the eve of trial, she sought to delay it by 30 to 60 days. On January 13 at about 10:50 p.m., Muth attempted to electronically file two motions. The first was the appearance by attorney Robert Holstein, who was retained the day before to assist at trial. The second was an emergency motion for a continuance, which stated in part that (i) Holstein needed additional time to prepare for trial, (ii) two "critical eyewitnesses" were unavailable during the week of January 14, and (iii) Muth's mother was in failing health, and Muth would be unable

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to adequately prepare for or attend the trial, which was expected to take at least three days. Muth planned to present the motion during the presiding judge's emergency call at 11:00 a.m. the next morning.

¶ 11 January 14

¶ 12 At 10:00 a.m. on January 14, the assignment judge sent the case to Judge James Varga for trial. Holstein was in the courtroom; Muth was not. Holstein did not step up or inform the assignment judge that Muth intended to ask for a continuance of several weeks. Holstein later said he did not know if his appearance was on file and was unsure of the parties' readiness for trial, though at the time he should have known of Muth's attempt to file the motions the night before.

¶ 13 About an hour later, Muth tried to present her motion for a continuance to the presiding judge. The presiding judge's clerk allegedly told Muth of the case's assignment to Judge Varga and advised her to present the motion to him.

¶ 14 Muth went to Judge Varga's courtroom. She tried to present him with her motion for a continuance; Judge Varga declined to hear it. Judge Varga told Muth that under Cook County Circuit Court General Administrative Order 16-2 (GAO 16-2), after a case has been set for a trial, motions for a continuance may only be heard by the presiding judge for the Law Division. Specifically, GAO 16-2 states, "All motions to continue trial on a case assigned to the Master Calendar Section must be presented to the Presiding Judge of the Law Division or his or her designee on the appropriate Courtroom 2005 motion call." Judge Varga also informed Muth that her motion was not on file and recessed until 1:30 p.m. to allow her to determine the status of the motion.

¶ 15 Revised Motion for Continuance

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¶ 16 Muth went to the clerk's office and learned that the motion for a continuance and Holstein's appearance, which she attempted to e-file the night before, had been rejected because she erroneously checked a "confidential" box. (The record, however, indicates Holstein's appearance was filed at 12:00 A.M. on January 14.) Muth refiled Holstein's appearance and filed a revised emergency motion for a continuance. The new motion again cited Muth's mother's health issues, the unavailability of two eyewitness, and Holstein's unpreparedness for trial. But the motion now included the "fact" Parrillo had flown to Florida that morning to be with his ill father and was unavailable for trial.

¶ 17 Muth attached two affidavits to the motion. Her own affidavit stated that her mother was in critically poor health, she and her brother were the primary caregivers, her brother was unavailable, and she would not be able to return full time to her law practice for a few weeks.

¶ 18 The second affidavit, from Parrillo and dated January 14, stated that (i) he received a call at about 10:30 p.m. on January 13, informing him that his father had been hospitalized in Florida, (ii) he took an 8:20 a.m. flight to Florida on January 14, (iii) he informed his attorney that morning and asked her to request a continuance, and (iv) he would return to Chicago as soon as possible to attend the trial. (Parrillo would later acknowledge he lied in his affidavit; he had not flown to Florida and was in Chicago all week.)

¶ 19 Muth tried to present her revised emergency motion to the presiding judge, but his courtroom was closed for lunch. So, she returned to Judge Varga's courtroom at 1:30 p.m., and asked him to rule on the motion. Judge Varga again declined, citing GAO 16-2.

¶ 20 Doe's attorney made an oral motion for default. Judge Varga denied the motion without prejudice. But rather than begin jury selection, Judge Varga continued the case until the following

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morning, telling the attorneys he would start jury selection at 9:30 a.m. and break at 11:00 a.m., so Muth could present her motion for a continuance to the presiding judge. Muth agreed.

¶ 21 January 15

¶ 22 Judge Varga convened court at 9:30 a.m. on January 15. Holstein was in the courtroom; Muth was not. According to an affidavit from Muth's mother, which was filed with a posttrial motion for a new trial, Muth was with her mother that morning. Muth's mother stated that she was having shortness of breath, felt anxious, and could not sleep. Although she lived with her son, she said he worked nights and was sleeping. So, she texted Muth and asked her to come over. Muth helped her use her nebulizer and CPAP machine and verbally calmed her down. Muth stayed until 10:15 a.m., when her brother woke up and her mother was no longer in crisis. Muth says she tried to call Holstein, the trial court, and the Office of the Cook County Clerk to alert the court she would be late that morning, but no one answered.

¶ 23 Back in Judge Varga's courtroom, Holstein told the judge he had not spoken to Muth, but she would be presenting her motion for a continuance to the presiding judge at 11:00 a.m. Judge Varga asked Holstein if he intended to participate in the trial; Holstein declined, saying he was unfamiliar with Parrillo and the facts and did not want to jeopardize the pending motion for a continuance. Holstein then left the courtroom. After waiting for Muth until 10:00 a.m., Judge Varga began jury selection.

¶ 24 Because Muth was allegedly with her mother that morning, she missed jury selection as well as the presiding judge's 11:00 emergency call. When Muth arrived at 11:30 a.m., the presiding judge's clerk told her she was too late but could present the motion for a continuance the next day.

¶ 25 Muth then went to Judge Varga's courtroom, saw that the trial had started, and Doe was testifying. Throughout the trial Muth and Holstein stood in the hallway and walked in and out of

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the courtroom several times but did not participate in the trial. Muth eventually left the courthouse and went to her office to prepare a motion for mistrial. When she returned, Judge Varga and Doe's attorneys were discussing jury instructions. Muth claims Judge Varga would not allow her and Holstein to participate in the jury instructions conference. While the jury deliberated, Muth presented her motion for a mistrial, citing her mother's poor health and Parrillo's right to be present at the trial. (We note that at least a-day-and-a-half had passed since Muth allegedly found out that Parrillo had gone to Florida, which would be revealed as an intentional falsehood. We do not know whether she had communications with her client after their initial conversation on Monday morning and the filing of the motion for a mistrial on Tuesday afternoon.) Judge Varga denied the motion.

¶ 26 No court reporter was present, so we have no transcript of the proceedings. The record reflects, however, that Doe was the only witness and exhibits admitted into evidence included Doe's medical records, photographs of her injuries, and Parrillo's text messages to Doe. The jury returned a verdict for Doe, awarding $1 million in compensatory damages for pain and suffering, loss of present and future normal life, and present and future emotional distress. The jury also awarded $8 million in punitive damages.

¶ 27 Post-Trial Hearing

¶ 28 Parrillo filed a post-trial motion to vacate the judgment and grant a new trial, arguing the trial court (i) abused its discretion by not ruling on his emergency motion for a continuance or allowing more than two opportunities to obtain a ruling from the presiding judge, (ii) improperly conducted a jury trial with neither him nor his attorneys present, (iii) gave improper and prejudicial jury instructions and failed to conduct an appropriate jury instructions conference, (iv) improperly admitted exhibits into evidence, and (v) failed to protect his rights and the integrity of the judicial

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process by conducting the trial without a court reporter. Parrillo also alleged the jury's compensatory and punitive damages awards were excessive. Parrillo argued, in part, that although GAO 16-2 states that motions to continue must be presented to the presiding judge, it also grants a trial judge "discretion to enter an order the judge feels is appropriate." Thus, Parrillo argued, Judge Varga had discretion to continue the case and abused his discretion by refusing to hear the motion.

¶ 29 Parrillo attached multiple exhibits to his motion, including affidavits from Muth's mother and Parrillo's father explaining their health problems and copies of his father's medical records, rather than affidavits from their physicians. Parrillo also filed a motion to

substitute his pretrial affidavit, stating that he was in Chicago when the trial began, that his stress about his father's health caused him to falsely tell his attorney he was in Florida, that he never read the prior affidavit, and his assistant signed it electronically.

¶ 30 After a hearing, Judge Varga denied the posttrial motion. First, on the motion for a continuance, Judge Varga noted (i) Parrillo lied in his affidavit, falsely stating he was in Florida when he was in Illinois, (ii) the motion lacked affidavits from physicians regarding the health of Parrillo's father and Muth's mother, and (iii) despite two days to do so, the motion had not been presented to the presiding judge. Judge Varga rejected Parrillo's argument that he could have ruled on the motion for a continuance, stating that although section IX of GAO 16-2 gives trial judges some discretion to enter orders, it is a "general boilerplate statement to appease full circuit judges." He said a trial judge can hold a case for a day or two, but only the presiding judge may grant a continuance of as much as 30 to 60 days.

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¶ 31 Regarding the trial, Judge Varga stated Holstein could have participated in jury selection and he and Muth could have participated in the trial. Instead, they stayed in the hallway looking in through the glass doors. He concluded that Parrillo and his attorneys had "abandoned" the trial.

¶ 32 Judge Varga determined the jury instructions properly stated the law, were not confusing or prejudicial to Parrillo, and complied with Illinois Supreme Court Rule 239 (eff. Apr. 8, 2013). And that contributory negligence and affirmative defenses were not included because Parrillo presented no evidence to support them. Judge Varga also rejected claims that the jury instruction conference should have included Parrillo's counsel on the ground that they had abandoned the trial.

¶ 33 As for damages, Judge Varga found Doe's testimony of physical and mental abuse and especially sexual assault severe enough for the jurors to award future damages without testimony from an expert. He also found the compensatory damages award to be reasonable and the punitive damages award to reflect the reprehensibility of Parrillo's misconduct and the harm Doe suffered, namely "being sexually assaulted and physically and mentally abused." Judge Varga ruled (i) any errors in admitting the medical records were harmless, and (ii) the parties, not the court, shoulder the responsibility for ensuring the presence of a court reporter.

¶ 34 Analysis

¶ 35 As a preliminary matter, we address Parrillo's contention that comments Judge Varga made in the posttrial hearing indicate favoritism toward Doe and bias against him, making a fair judgment impossible. Parrillo cites statements he claims show hostility toward him and his attorneys and indignation about his attorneys' suggestions that the judge erred or abused his discretion.

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¶ 36 Judges are presumed impartial. The party making the charge bears the burden of overcoming the presumption by showing prejudicial trial conduct or personal bias. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31 (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002)). "[W]hile most bias charges stemming from conduct during trial do not support a finding of actual prejudice, there may be some cases in which the antagonism is so high that it rises to the level of actual prejudice." *Id.* Our supreme court has held that judicial remarks during a trial that are " 'critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.'

" (Emphases in original.) *Eychaner*, 202 Ill. 2d at 281 (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). Assessment of a party based on evidence presented during proceedings negates deep-seated favoritism or antagonism. *In re Estate of Wilson*, 238 Ill. 2d 519, 555 (2010); *Calabrese v. Benitez*, 2015 IL App (3d) 130827, ¶ 26.

¶ 37 During the posttrial hearing, Judge Varga gave an account of facts: (i) Parrillo tried to deceive the court when he submitted the original affidavit, (ii) his counsel bungled the filing of the motion for a continuance, and (iii) his counsel chose not to participate in the trial, despite the ability and the opportunity to do so. Rather than hostility, Judge Varga's comments indicate displeasure with defense counsel's choice of waiving participation at trial. Expressions of displeasure or irritation do not necessarily indicate judicial bias against a party or their counsel. *Antonacci v. Seyfarth Shaw, LLP*, 2015 IL App (1st) 142372, ¶ 39. In *Antonacci*, the trial court properly dismissed a claim of bias where the judge displayed frustration with the petitioner's attempt to submit a surreply one day before a hearing. *Id.* Similarly, Judge Varga's comments, which we have

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closely reviewed, stem from frustration with the defense's behavior rather than indicating deep-seated favoritism or antagonism. Indeed, Judge Varga's comments came after trial, and, thus, could not have prejudiced the defense during trial. See *Calabrese*, 2015 IL App (3d) 130827, ¶ 26 (judge's comments during posttrial hearing, based on facts, did not entitle defendant to new trial).

¶ 38 Motion for a Continuance

¶ 39 Parrillo contends the trial court abused its discretion in refusing to hear and rule on his motion for a continuance or give him additional time to present the motion to the presiding judge. Continuances are within the sound discretion of the trial court. *K&K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 22; *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430 (1996). The decision to grant or deny a trial continuance will not be disturbed on appeal "unless it has resulted in a palpable injustice or constitutes a manifest abuse of discretion." *Wine v. Bauerfreund*, 155 Ill. App. 3d 19, 22 (1987). To demonstrate an abuse of discretion, the decision must be arbitrary, fanciful, or unreasonable or a decision no reasonable person would make. *Roach v. Union Pacific R.R.*, 2014 IL App (1st) 132015, ¶ 20.

¶ 40 Section 2-1007 of the Code of Civil Procedure states that the court has the discretion to grant additional time for "the doing of any act or the taking of any step or proceeding prior to judgment" on good cause shown. 735 ILCS 5/2-1007 (West 2018). Further, the "circumstances, terms and conditions under which continuances may be granted, the time and manner in which application therefor shall be made, and the effect thereof, shall be according to rules." *Id.* Illinois Supreme Court Rule 231(f) (eff. Jan. 1, 1970) states, "[n]o motion for the continuance of a cause made after the cause has been reached for trial shall be heard, unless a sufficient excuse is shown for the delay." Once the case reaches the trial stage, the party seeking a continuance must provide the court with "especially grave reasons" for the continuance because of the potential

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inconvenience to the witnesses, the parties, and the court. *In re Marriage of Ward*, 282 Ill. App. 3d at 430-31.

¶ 41 The record establishes that Parrillo's counsel had multiple opportunities to present a motion for a continuance and repeatedly stumbled. Muth was in court on January 7, 2019, when the case was assigned a trial date. Muth did not ask for a continuance, though her mother's affidavit indicates she had already been hospitalized and may have required more assistance than usual. Knowing of her mother's condition and her brother's schedule, Muth could have said

something. More significantly, Muth and Holstein, between January 13 and January 15, had plenty of time to present the motion to the presiding judge, especially as an "emergency motion." Muth filed an emergency motion late on January 13, and had she followed proper procedure, the motion would have been heard. Yet, Holstein sat in the courtroom that morning as the case was assigned to Judge Varga. Holstein could have alerted the court that Muth had filed an emergency motion for a substantial delay. Holstein knew Muth wanted a continuance, and as an experienced attorney, he should have brought this to the court's attention.

¶ 42 Rather than proceed with the trial, Judge Varga continued the trial by recessing until the next day, giving Parrillo's counsel another opportunity to present the emergency motion. Once again, counsel apparently slipped up; Muth claims she missed the presiding judge's emergency motion call because she was with her mother. While we are sympathetic to family health emergencies, Muth could have made other arrangements to ensure timely presentation of the motion by, for instance, asking Holstein, retained as second-chair, to present the motion or making arrangements with her brother to be on call on January 13 and 14 due to the impending trial. Indeed, Muth's attorney acknowledged during oral argument that Holstein could have presented the motion for a continuance to the presiding judge.

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¶ 43 Judge Varga advised Parrillo's counsel that under GAO 16-2 only the presiding judge could grant a trial continuance of the length sought by Parrillo's counsel. Parrillo contends, however, that the trial judge had discretion to continue the case for a few days or to give his attorneys a third chance to present the motion to the presiding judge. Nothing in the record shows that Parrillo's counsel ever asked Judge Varga for a continuance of a day or two; they insisted on a 30-day to 60-day continuance, which only the presiding judge could grant. Judge Varga continued the trial for a day to give them another opportunity to present their motion to the presiding judge. Though section IX of GAO 16-2 grants Judge Varga "discretion to enter an order [he] feels is appropriate" under these circumstances, a reasonable person could take the same view as Judge Varga and proceed with the trial.

¶ 44 Counsel's availability, a factor to consider in deciding a motion for a continuance, does not cede a party the right to a continuance. *K&K Iron Works*, 2014 IL App (1st) 133688, ¶ 33 (citing *Thomas v. Thomas*, 23 Ill. App. 3d 936 (1974)). This is particularly so when more than one attorney represents the party. *Lipke v. Celotex Corp.*, 153 Ill. App. 3d 498, 510 (1987). Holstein, a lawyer since 1962, claimed to be unprepared for trial because he had not met Parrillo. But an attorney can represent a client without meeting him or her. Once Holstein agreed to represent Parrillo, he had a duty to both Parrillo and the court to provide his professional services and represent the client competently. See ISBA Op. No. 85-6 (Dec. 1985), https://www.isba.org/sites/files/ethicsopinions/85-06.pdf [https://perma.cc/S6AN-YFZ7]. Holstein carried an equal responsibility with Muth in presenting the motion for continuance, covering the jury selection, and attending the trial. Parrillo's attorneys mishandled the situation multiple times. Judge Varga did not abuse his discretion in declining them a third opportunity to file their motion.

¶ 45 Due Process

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¶ 46 Parrillo contends the trial court violated his due process rights by conducting a trial in his absence, which prevented him from presenting a defense.

¶ 47 As an initial matter, we note that a defendant's absence in a civil trial does not raise a due process violation or alone provide a basis for reversing a jury's verdict. If adequate notice has been given, a civil jury trial may proceed without

the party or counsel, and the present party may prove its claim as if the opposition had been there. See *In re Marriage of Garde*, 118 Ill. App. 3d 303, 307 (1983); see also *City of Joliet v. Szayna*, 2016 IL App (3d) 150092, ¶ 47 ("The procedure for entry of an *ex parte* judgment is to hold a trial in the party's absence and require the opposing party to present evidence to prove their claim."); *In re Marriage of Harnack*, 2014 IL App (1st) 121424 (holding, unreasonable to vacate judgment where any alleged errors or injustices due solely to movant's failure to participate).

¶ 48 In *Garde*, the defendant and his counsel received proper notice of trial, though neither appeared. 118 Ill. App. 3d at 306. The plaintiff proceeded to testify and provide evidence, and the trial court entered judgment. *Id.* at 305. The appellate court characterized this judgment as "a judgment on the merits entered after an *ex parte* hearing," and not a default judgment. *Id.* at 307. Without a report of the proceedings, the appellate court assumed the trial court heard adequate evidence to support its judgment. *Id.* at 308. In considering a motion to vacate the judgment, the court's primary concern was whether substantial justice had been done, including consideration of movant's due diligence. *Id.* The appellate court affirmed the judgment, finding the defendant had his day in court, but ignored it, and the trial court acted fairly. *Id.*

¶ 49 Likewise, Parrillo and his counsel received proper notice of trial, appeared before Judge Varga, and walked in and out of the courtroom during the trial. They chose to abdicate their role. Holstein attended the start of jury selection. And, after the trial started, Parrillo's attorneys entered

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and left the courtroom and could be seen by Judge Varga in the hallway. They could have cross-examined Doe, presented evidence, and attended the jury instruction conference. Instead, they decided to pin their client's case on a motion for a mistrial.

¶ 50 Maybe impulsively, maybe imprudently, but just the same, Parrillo's counsel made a definite and voluntary choice by "abandoning" the trial, as Judge Varga characterized it, and taking their chances first with a motion for a mistrial and then with an appeal. "Attorneys have a legal and ethical duty to act with reasonable diligence in representing their client's interests." *Tiller v. Semonis*, 263 Ill. App. 3d 653, 657 (1994). Of special significance here, contrary to what Parrillo said in his affidavit the day of trial, he was in Illinois, not Florida, and never gave a single reason for his falsehoods or his absence. The failure to present a defense lays squarely on Parrillo and his attorneys. Had Parrillo's attorneys participated in the trial, they would be in a better position to know what testimony and exhibits Doe presented, the basis for the jury instructions, and the arguments Doe made on damages.

¶ 51 Considering the total lack of diligence by Parrillo and his counsel, Judge Varga acted well within his discretion. All alleged errors involve choices made by counsel and Parrillo. Counsel refused to participate in jury selection or trial or take steps to properly present the motion for a continuance to the presiding judge. Parrillo filed an untruthful affidavit. Together, this appears more like a tactic to secure a continuance than a series of unfortunate events. We do not know when Parrillo learned of his counsel's refusal to participate in the trial, to walk away and take their chances. Either Parrillo chose to rely on (and perhaps participate) in his attorneys' decision or laid low to conceal his falsehoods. Ultimately, Parrillo shares responsibility for his counsels' choices.

¶ 52 Court Reporter

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¶ 53 Parrillo asserts that once Judge Varga decided to proceed with the trial, he should have required Doe to retain a court reporter. He argues that, without a trial transcript, he has no way to analyze the evidence or show that the trial court made

errors that warrant reversal. Also, he suggests that Judge Varga should have granted his request for his trial notes so he could know the substance of Doe's testimony.

¶ 54 Parrillo does not cite, nor could we find, a case holding that a trial judge must ensure attendance of a court reporter at trial. Courts consistently have held that even a self-represented appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 55 Without a trial record, we assume the trial court acted in conformity with the law and had sufficient evidence to support its judgment. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432-34 (2001) (affirming appellate court's holding that where basis for trial court's decision is unknown, a reviewing court presumes adequate evidence and conformity with law); *Foutch*, 99 Ill. 2d at 391; *Gataric v. Colak*, 2016 IL App (1st) 151281, ¶¶ 30-31 (there is a presumption the trial court heard adequate evidence for decision where there is no transcript and no findings of fact). Any deficiencies in the record on appeal falls squarely on Parrillo, as the appellant, not Doe, not the trial judge.

¶ 56 Had Parrillo made a record of the proceedings, not only would we know what happened at the trial, but we could assess his argument that the trial judge erred in declining to hear his motion for a continuance. We only have his attorney's assertion that the trial judge acted improperly and, rather than doctor affidavits, affidavits from Muth's mother and Parrillo's father regarding their health, all of which provide insufficient grounds for reversing the judgment.

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¶ 57 Although Doe's attorney wrote Parrillo's counsel, advising she "intended" to have a court reporter present and asking Parrillo to split the cost, whether Parrillo's counsel replied, let alone agreed, we do not know. The letter does not absolve Parrillo of his burden of providing an adequate record for this appeal.

¶ 58 Even without a court reporter, Parrillo could have attempted to compile a bystander report under Illinois Supreme Court Rule 323(c) (eff. July 1, 2017). Had his attorneys attended the proceedings, they may have been able to prepare and propose a report, which could have been certified and included in the record on appeal.

¶ 59 Moreover, Parrillo has no basis to expect he and his counsel could refuse to appear at trial and then access Judge Varga's notes on the proceedings, as Parrillo suggests. Just as a trial court is not responsible for providing a court reporter, we have found no case law indicating a trial judge must provide access to his or her trial notes. In addition, once Parrillo's counsel knew the trial was proceeding, they could have hired a court reporter to hurry over to court. Ultimately, the lack of adequate record on appeal rests solely on the defense.

¶ 60 Jury Instructions

¶ 61 Parrillo contends the trial court erred by (i) holding a jury instruction conference without allowing his attorneys to participate and (ii) issuing improper instructions to the jury.

¶ 62 A trial court has discretion to determine the appropriate jury instructions, and its determination will be reversed only for an abuse of discretion. *In re Timothy H.*, 301 Ill. App. 3d 1008, 1015 (1998). A litigant waives the right to object on appeal to instructions or verdict forms by failing to make a specific objection during the jury instruction conference or when the form is read to the jury. *Marek v. Stepkowski*, 241 Ill. App. 3d 862, 870 (1992). Additionally, even if the litigant properly objects to an instruction or verdict form, the litigant still must submit a remedial

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instruction or verdict form. See *id.* Timely objection and submission help the trial court correct the problem and prohibit the challenging party from gaining an advantage by obtaining reversal based " 'Enlightened trial practice does not permit counsel under the guise of trial strategy to sit idly by and permit instructions to be given the jury without specific objections and then be given the advantage of predicating error thereon by urging the error for the first time in a post-trial motion ***.' " *Allen v. Howard Bowl, Inc.*, 61 Ill. App. 2d 317 (1965) (quoting *Onderisin v. Elgin, Joliet & Eastern Ry. Co.*, 20 Ill. App. 2d 73, 78 (1959)).In his order denying Parrillo's posttrial motion, the trial court stated, "The defense made no objection and tendered no jury instructions. The defense waived all evidentiary rulings by the trial court and jury instructions given by the court." Absent a specific objection during the jury instruction conference or the tender of a remedial instruction, the issue is waived.

¶ 63 Parrillo contends Judge Varga prevented his attorneys from participating in the jury instructions conference. An appellant has the burden to present a sufficient record to support a claim of error. *Webster*, 195 Ill. 2d at 432 (citing *Foutch*, 99 Ill. 2d at 391-92). Strictly speaking, " [f]rom the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Foutch*, 99 Ill. 2d at 391. Review requires a report or record of the proceeding where the issue relates to the conduct at a hearing or proceeding. *Webster*, 195 Ill. 2d at 432. Without that record, we presume that the ruling conforms to the law and has a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. Absent a transcript showing that the trial court prohibited Parrillo's attorneys from participating in the jury instruction conference, no basis exists for finding that the trial court abused its discretion. See *id.*

19 *19

¶ 64 Compensatory Damages

¶ 65 Parrillo argues that the jury's compensatory damages award of $1 million—$200,000 each for pain and suffering, present and future loss of normal life, and present and future infliction of emotional distress—is excessive.

¶ 66 Generally, the amount of a verdict is at the discretion of the jury. *Dahan v. UHS of Bethesda, Inc.*, 295 Ill. App. 3d 770, 781 (1998). The trier of fact determines the question of damages, and "a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court." *Richardson v. Chapman*, 175 Ill. 2d 98, 113 (1997); *Klingelhoets v. Charlton-Perrin*, 2013 IL App (1st) 112412, ¶ 67. A court will order a remittitur or, if the plaintiff does not consent, a new trial should a verdict be determined excessive. *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 412-13 (1997). In *Richardson*, the supreme court listed factors for viewing an award as excessive: (i) exceeding the range of fair and reasonable compensation, (ii) result of passion or prejudice, or (iii) so large it shocks the judicial conscience. *Richardson*, 175 Ill. 2d at 113. Remittitur will not be ordered when an award " 'falls within the flexible range of conclusions which can reasonably be supported by the facts.' " *Best*, 179 Ill. 2d at 412 (quoting *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 470 (1992)). When reviewing an award of compensatory damages for nonfatal injuries, a court may consider, among other things, "the permanency of the plaintiff's condition, the possibility of future deterioration, the extent of the plaintiff's medical expenses, and the restrictions imposed on the plaintiff by the injuries." *Richardson*, 175 Ill. 2d at 113-14.

¶ 67 Parrillo contends that $200,000 for pain and suffering is excessive, relying on *Richardson*. There, the jury awarded $100,000 for pain and

suffering to a plaintiff who got facial lacerations in a car accident. The Illinois Supreme Court found the award excessive and reduced it by half, noting

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that the laceration on the plaintiff's forehead eventually healed, with only minimal scarring. *Id.* at 144-15. Parrillo argues that, like the plaintiff in *Richardson*, the medical records indicate Doe suffered a minor facial injury, with no evidence of a fracture or scarring, and that $200,000—twice the award in *Richardson*—is excessive.

¶ 68 We disagree. Decided nearly 25-years ago, in *Richardson*, the plaintiff injuries occurred when defendant's car rear-ended the car in which plaintiff was a passenger. This vastly differs from the injuries Doe suffered. As the trial court observed, Doe testified Parrillo "physically and mentally and sexually assaulted" her. Even if Doe's visible injuries were comparable to the plaintiff's in *Richardson*, a questionable contention given photos in the record showing significant bruising on her face and elsewhere, Doe, unlike the plaintiff in *Richardson*, was sexually assaulted. Based on the record, an award of $200,000 does not shock the judicial conscience and is reasonable.

¶ 69 Parrillo also argues the "evidence offered to support plaintiff's claim for pain and suffering was comprised solely of the plaintiff's unchallenged, non-cross examined, self-serving testimony." While true, that was the fault of his counsel, who did not participate in the trial or offer any counter evidence.

¶ 70 Next, Parrillo argues the jury award of $400,000 for present and future loss of normal life and present and future emotional distress was excessive and without evidentiary support. Specifically, Parrillo argues Doe failed to present corroborating expert testimony to support her claim for future loss of normal life damages. Parrillo cites no cases, and we were unable to find any, holding that those damages must be supported by corroborating expert testimony. As Parrillo notes, no trial record shows the testimony that was offered regarding present and future loss of normal life. The jury saw, without objection, photos of Doe's injuries and Parrillo's text messages

21 *21

threatening Doe and admitting he choked her. Based on this evidence, we cannot say that the amount awarded exceeded the range of fair and reasonable compensation or was so large as to shock the judicial conscience. *Id.* at 113.

¶ 71 We also reject Parrillo's argument that Doe failed to present sufficient evidence to support a claim for infliction of emotional distress and that the jury's award of $400,000 was excessive. Parrillo again complains of the absence of a court reporter; without a trial transcript, he cannot know all of the testimony and evidence presented to support this claim. Nor can we. Based on the evidence in the record, we cannot say the amount awarded exceeded the range of fair and reasonable compensation or was so large as to shock the judicial conscience. *Id.* While slim, the record contains evidentiary support for the jury's verdict and the award.

¶ 72 Punitive Damages

¶ 73 Parrillo contends the jury's finding that he acted willfully and maliciously, as required for a punitive damages award, was against the manifest weight of the evidence. He also argues the punitive damages award of $8 million was excessive.

¶ 74 Punitive damages have punishment and deterrence as their aim, not compensation. Punitive damages are available only in cases where the wrongful act complained of is characterized by wantonness, malice, oppression, willfulness, or other circumstances of aggravation. *Cruthis v. Firstar Bank, N.A.*, 354 Ill. App. 3d 1122, 1133 (2004). Because of their penal nature, punitive damages are not favored in the law, and

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courts must be cautious in seeing that they are properly and wisely awarded. *Id.* at 1131. While the question of awarding punitive damages for a particular cause of action is a matter of law, the jury decides the question of whether defendant's conduct was sufficiently willful or wanton to justify the imposition of punitive damages. *Cirrincione v. Johnson*, 184 Ill. 2d 109, 116 (1998). We review this factual finding under a manifest weight

22 *22

standard. *Id.* To be against the manifest weight of the evidence, the opposite conclusion of the finding must be clearly evident or the finding itself must be unreasonable, arbitrary, or not based on the evidence. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 75 Parrillo contends that because he did not present a defense at trial and the jury only heard from Doe, the jury lacked sufficient evidence to determine whether punitive damages were warranted. As noted, a trial transcript is not available, but the record shows the jury heard from Doe and was shown pictures of her injuries and text messages from Parrillo, admitting that he choked Doe and threatening to harm her. Also, Doe's medical records from a visit to the emergency room were admitted into evidence. Again, the fault for a lack of a defense lies with Parrillo and his counsel. The jury's finding that punitive damages were warranted based on the evidence it heard and was not against the manifest weight of the evidence.

¶ 76 Parrillo also argues the $8 million punitive damages award was excessive under the federal due process standard. Punitive damages are appropriate when a tort is committed with " 'fraud, actual malice, deliberate violence or oppression, or when the defendant acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others.' " *Doe v. Catholic Bishop of Chicago*, 2017 IL App (1st) 162388, ¶ 9 (quoting *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 186 (1978)). A reviewing court may reduce the amount of punitive damages when it is clearly excessive. *Hough v. Mooningham*, 139 Ill. App. 3d 1018, 1024 (1986). An award of punitive damages becomes excessive when it is so large that it no longer serves the purposes of acting as retribution against the defendant and a deterrent against the defendant and others. *Hazelwood v. Illinois Central Gulf R.R.*, 114 Ill. App. 3d 703, 711 (1983).

¶ 77 The due process clause of the fourteenth amendment prohibits imposing a grossly excessive or arbitrary punishment on a tortfeasor, as the award would serve no legitimate purpose

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and constitute an arbitrary deprivation of property. *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 416-17 (2003). The United States Supreme Court developed three guideposts to determine whether a jury's award of punitive damages comports with due process: (i) the degree of reprehensibility of the conduct, (ii) the disparity between the harm or potential harm suffered by the plaintiff and the amount of punitive damages awarded, and (iii) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75 (1996). We apply a *de novo* standard of review to those factors to ensure the punitive damages award turns on the " 'application of law, rather than a decisionmaker's caprice.' " *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436 (2001) (quoting *Gore*, 517 U.S. at 587 (Breyer, J., concurring, joined by O'Connor and Souter, JJ.)).

¶ 78 The United States Supreme Court considers the degree of reprehensibility of the defendant's conduct the most important factor. *Gore*, 517 U.S. at 575. In evaluating reprehensibility, the Court has instructed us to consider whether (i) the harm caused was physical as opposed to economic, (ii) the tortious conduct evinced an indifference to or a

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reckless disregard of the health or safety of others, (iii) the target of the conduct had financial vulnerability, (iv) the conduct involved repeated actions or was an isolated incident, and (v) the harm was the result of intentional malice, trickery, or deceit, or mere accident. *Campbell*, 538 U.S. at 419. The existence of only one of these factors weighing in the plaintiff's favor may be insufficient to sustain a punitive damage award, and the existence of none of these factors in the plaintiff's favor would render the award suspect. *Id.*

¶ 79 Parrillo contends it is impossible to assess the reprehensibility of his conduct in the absence of a trial record or presentation of a defense. We disagree. As noted, the appellate record includes

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pictures of Doe's injuries, her medical records, and threatening text messages Parrillo sent to Doe. Further, Doe alleged Parrillo physically assaulted her four different times and sexually assaulted her. The harm to Doe was physical, was not a mere accident or an isolated incident (*id.*), and was sufficiently reprehensible to warrant punitive damages.

¶ 80 Under the second *Gore* factor, the court compares the ratio between the actual harm to the plaintiff and the punitive damages award. *Blount v. Stroud*, 395 Ill. App. 3d 8, 26 (2009). This court has recognized that " 'an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety,' and that 'few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.' " *Id.* (quoting *Campbell*, 538 U.S. at 425); see *id.* at 29 (the court found that a ratio of 1.8 to 1, after taking the attorney's fee award into account, was not excessive).

¶ 81 Parrillo correctly states that our supreme court has said the best way to determine whether the appropriateness of the ratio between the compensatory damages award and the punitive damages award is to compare it to awards in similar cases. *International Union of Operating Engineers Local No. 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 487 (2006). But Parrillo cites just one case, *Fall v. Indiana University Board of Trustees*, 33 F. Supp. 2d 729 (N.D. Ind. 1998), which does little to support his argument. In *Fall*, which involved federal gender discrimination and state law sexual assault and battery, the district court found that the jury's punitive damages award of $800,000 was excessive and offered the plaintiff the option of accepting $50,000 or vacating the award and holding a new trial. The court looked at numerous factors, including that the ratio between compensatory damages of $5157 to punitive damages was 155 to 1. The award of $50,000 would lower the ratio to about 10 to 1. Here, the ratio between compensatory and punitive damages was 8 to 1, far less than what was found reasonable in *Fall*.

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¶ 82 The final factor in the *Gore* analysis involves the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Parrillo's conduct is not subject to civil penalties, but Parrillo argues this factor weighs in favor of finding that the jury's punitive damages award of $8 million is excessive because if tried criminally, the maximum fine would have been $35,000 ($2500 for each misdemeanor domestic battery violation under section 5-4.5-55(e) of the Unified Code of Corrections (730 ILCS 5/5-4.5-55(e) (West 2018)) and $25,000 for the criminal sexual assault violation under section 5-4.5-30(e) of the Unified Code of Corrections (id. §§ 5-4.5-30(e), 5-4.5-50(b))).

¶ 83 This argument is legally unsound. Had Parrillo been charged and convicted criminally, he likely could have sentenced to a prison term of 4 to 15 years for the criminal sexual assault violation alone. That his criminal fine would be

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far less than $8 million is of no consequence, as the prison term would serve as the primary punishment.

¶ 84 Parrillo's failure to present a compelling argument for reducing the amount of punitive damages, however, does not prevent us from considering whether a lesser amount would achieve the goals of punishment and deterrence, without stepping over the line of constitutional impropriety. In *Blount*, the court stated, an award of four times the amount of compensatory damages falls close to that line. *Blount*, 395 Ill. App. 3d at 26. The jury's award of twice that amount steps over that line. Without in any way diminishing the harm Doe suffered at Parrillo's hands, a punitive damages award of $1 million satisfies due process while also sending a strong message to Parrillo and others that this conduct is reprehensible and condemned in the strongest terms. So, we reverse the $8 million punitive damages award and reduce it to $1 million, for a total of $2 million in damages. *Lowe Excavating Co. v. International Union of Operating Engineers*

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Local No. 150, 358 Ill. App. 3d 1034, 1045 (2005) (reducing punitive damages award from $525,000 to $325,000), *rev'd on other grounds by Lowe*, 225 Ill. 2d 490-91.

¶ 85 Medical Records

¶ 86 Parrillo contends the trial court should not have admitted Doe's medical records into evidence to support her claim for damages because they lacked proper foundation and were unfairly prejudicial. Preserving a question for review requires an appropriate objection in the trial court. *Addis v. Exelon Generation Co.*, 378 Ill. App. 3d 781, 795 (2007). Failure to object constitutes a waiver of the issue on review. *Id.* Parrillo failed to raise an objection to the admission of Doe's medical records during the trial. He waived the issue.

¶ 87 Mistrial

¶ 88 Parrillo asserts the trial court erred in denying his motion for a mistrial because his due process rights were violated by holding a trial in his absence.

¶ 89 Whether to declare a mistrial rests in the trial court's sound discretion and will not be reversed absent abuse of discretion. *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (1992). "A mistrial should be declared only as the result of some occurrence of such character and magnitude that a party is deprived of its right to a fair trial, and the moving party must demonstrate actual prejudice as a result of the ruling or occurrence." *Baker v. CSX Transportation, Inc.*, 221 Ill. App. 3d 121, 138 (1991).

¶ 90 As noted, the failure to have the motion for a continuance heard by the presiding judge was the fault of Parrillo's counsel. Further, one of the primary grounds for the continuance—that Parrillo had gone to Florida for a visit his father—was false. Then, when the trial began, Parrillo's counsel could have participated (as could have Parrillo), but voluntarily absented themselves,

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leading the trial court to conclude they had abandoned the proceedings. Parrillo received a fair trial. His nonparticipation attaches to his counsel and himself.

¶ 91 The trial court did not abuse its discretion in denying his motion for a mistrial.

¶ 92 Affirmed in part and reversed in part.

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Attorneys for Appellant:

Ronald F. Neville, Terence J. Mahoney, and Jennifer Mann, of Neville & Mahoney, of Chicago, for appellant.

Attorneys for Appellee:

Daniel J. Voelker, of Voelker Litigation Group, of Chicago, for appellee.

14.
Affidavit of Allison K. Muth

Firm I.D. 30701

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JANE DOE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 2016 L 012247
	)	
BEAU PARRILLO,	)	
	)	
Defendant	)	
	)	

AFFIDAVIT OF ALLISON K. MUTH

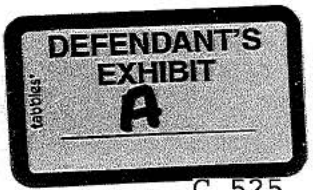
ALLISON K. MUTH, having been duly sworn, states the following facts are true and correct.

1. The facts set forth in this Affidavit are based on my personal knowledge. I am over the age of 18 and, if called to testify at trial or hearing in this cause, I would be competent to testify to those facts.

2. I am an attorney licensed to practice in the State of Illinois.

3. I am one of the attorneys representing the defendant, Beau Parrillo in the cause of action filed in the Circuit Court of Cook County and known as Doe v. Parrillo, Court No. 2016 L 012247.

4. On January 7, 2019, this case was certified for trial by Judge O'Brien to be placed on the Presiding Judge's assignment call at 10:00 a.m. on January 14, 2019. Attorney Allison Muth ("Muth") was present on January 7, 2019, and did not object to the certification of the case for trial.



5. On January 13, 2019, attorney Allison Muth filed a Motion for a Continuance of the trial for numerous reasons, including the fact that attorney Muth is her mother's caregiver and because of her mother's medical condition, attorney Muth had to care for her mother and was not therefore available for trial on the week of January 14, 2019. Muth attempted to file, at 10:50 p.m., an emergency motion for continuance as well as the appearance of Attorney Robert Holstein ("Holstein") to assist Muth at the trial. Muth's attempted filing of the emergency motion, notice of motion, and Holstein's appearance was subsequently determined to have been electronically rejected.

6. On January 14, 2019, counsel for Plaintiff appeared before a Judge sitting in for the Presiding Judge as the Assignment Judge for that day in Courtroom 2005 for trial assignment at 10:00 a.m. At that time, the case was assigned to Judge James A. Varga for trial in Courtroom 2005. Holstein was present in Courtroom 2005 during the assignment to Judge Varga, but did not step up before the Assignment Judge because he was not certain that his appearance had been filed and he did not know the readiness of the parties for trial that day. Holstein did appear before Judge Varga.

7. The case was on the Trial Call in Room 2005 at 10:00 a.m. On that morning, on her way to Court, Muth received news that Beau Parrillo's father, Richard Parrillo, was admitted to the Hospital in Aventura, Florida in critical condition. Due to the recent news and receiving confirmation that Beau Parrillo would be unable to attend Court that day and until the defendant was able to assess his father's medical condition, Muth appeared in Room 2005 at 10:15 a.m. for the 11:00 a.m. emergency motion call. At that time, she was informed that the case had been assigned to Judge Varga in Courtroom 2406. Muth spoke with the Clerk about presenting her Emergency Motion for

a continuance of the trial, and the Clerk told her to appear before Judge Varga, as he was now assigned the case.

8. At approximately 10:20 a.m. Muth appeared before Judge Varga in Room 2406 and presented the defendant's emergency motion for a continuance of the trial, explaining the substance of the emergency and the need for a continuance, i.e., the defendant's father was in critical condition in Florida, and Muth's mother was extremely ill and needed Muth, her caretaker, to care for her. Muth showed the Court a copy of the emergency motion for a continuance to Judge Varga that she believed was filed with the Clerk of the Court the night before. She explained to the Court her mother's grave condition of health and the need for assistance. The court declined to rule on the motion stating the Court did not have authority to hear a motion for a continuance because the Presiding Judge's standing orders only allowed the Presiding Judge to rule on an emergency motion for a continuance. The Plaintiff objected to the continuance. Judge Varga said he would confer with the Presiding Judge about the circumstances, and left the Room 2406 for approximately 30 minutes. When he returned, around 11:00 a.m., he informed both parties' attorneys that he could not locate the Presiding Judge and that the emergency motion was not in the court file.

9. The Court took a recess until 1:30 p.m. for defendant's counsel to check the status of the emergency motion and appear before the Presiding Judge for a decision on the emergency motion.

10. Immediately thereafter, about 11:20 a.m., attorneys Muth and Holstein went to the Clerk of the Law Division's office inquire about the status of the filing of both Holstein's appearance and the emergency motion for the continuance. The Clerk's

office, after performing their own research, informed Muth that the filing had been rejected due to a box inadvertently being checked stating "confidential." The Clerk informed Muth that she would have to re-file and marked the filing as "rejected" at 11:27 a.m. on January 14, 2019.

11. At 12:28 p.m. Muth refiled and the Clerk accepted the emergency motion along with her certification pursuant to 1-109 of the Illinois Code of Civil Code of Civil Procedure, which included information about the defendant's father's medical condition and Muth's mother's medical condition. Muth returned to Courtroom 2005 to obtain a ruling on the emergency motion but the courtroom was closed for lunch with no support staff present.

12. At 1:30 p.m. Court resumed in Courtroom 2406 before Judge Varga. Muth informed the Court of the issue with the filing of the emergency motion, and once again presented the emergency motion to Judge Varga for a ruling. Judge Varga again declined to hear or rule on the motion on the ground he had no authority/jurisdiction to hear and rule on such a motion because the Presiding Judge of the Law Division was the only judge who could rule on the motion. In addition, Judge Varga requested Muth to call Beau Parrillo and discuss settlement. Muth did so, but Beau Parrillo was emotionally upset and not in the proper state of mind to discuss settlement due to his father's medical condition.

13. Next, Plaintiff orally made a SCR 237 motion for default judgment based on Beau Parrillo not being present. Both parties argued, and in Beau Parrillo's defense, Muth stated once again the reason, i.e., his father's critical medical condition, and asked the Court to at least hold the case over for a few days to figure out the status of

both her own mother's health, and that of Beau Parrillo's father's health. Judge Varga informed plaintiff's attorneys that their motion should have been in writing and that due to the circumstances being presented to the court, he denied the motion for default judgment without prejudice. Because the time was approximately 3:00 p.m., Judge Varga stated he would continue the case until the next morning at 9:30 a.m. for jury selection so that Muth could try and present the defendant's emergency motion for a continuance prior to jury selection.

14. On January 15, 2019, at approximately 8:00 a.m., Muth was with her mother whose medical condition was deteriorating. Her oxygen levels were low, and she needed emergency assistance. While Muth was assisting her mother, she attempted to call her co-counsel, Holstein, to have him inform the court that she would not be in Court at 9:30 a.m., but Holstein did not answer his phone. Muth had received a voicemail from plaintiff's counsel at 9:39 a.m. that they were beginning to pick a jury without her or her client being present. Muth returned the call around 10:15 a.m. but no one answered. Holstein arrived at Judge Varga's Courtroom at approximately 10:00 a.m. and at the same time the venire was being assembled in the hallway outside the courtroom. Judge Varga asked Holstein whether Muth was on her way to which Holstein responded that he was aware Muth was caring for her mother, but that she intended come to Court that day and present the defendant's emergency motion at 11:00 a.m. in the Presiding Judge's Courtroom.

15. On January 15, 2019, at 9:30 a.m., plaintiff was ready for trial in Courtroom 2406.

16. On January 15, 2019, neither defendant, Beau Parrillo, nor his counsel, Allison Muth, appeared at 9:30 a.m. in Courtroom 2406.

17. Defendant's co-counsel, Holstein, although present in Courtroom 2406 at the commencement of the trial on January 15, 2019, declined to participate in the trial and left the Courtroom after being invited by Judge Varga to participate.

18. Holstein was surprised to see the Court was preparing to go forward with the selection of the jury before it was known whether Muth had been able to present the defendant's emergency motion for a continuance. Judge Varga then asked Holstein whether or not he was going to participate in the selection of the jury. Holstein replied that under the circumstances, i.e., he had no client contact and was unable to contact Muth who was probably enroute to Court, he was concerned that his participation in the proceedings might prejudice the defendant and his counsel's right to seek a continuance under these unfortunate circumstances. In addition, Holstein was unable to confirm his appearance being filed with the Clerk. Plaintiff's counsel failed to inform Holstein if they were aware or not that his appearance had been filed with the Clerk. Because of her mother's medical condition, Muth was unable to arrive at Court until around 11:30 a.m. Upon reaching the Daley Center, Muth went directly to the Presiding Judge's Courtroom 2005 and was informed by the Clerk that it was too late for the emergency motion to be heard, and recommended she go before Judge Varga. Muth spoke with the Clerk in the Clerk's office and asked the Clerk to speak with the Presiding judge, explain the situation to the Presiding Judge, and to ask him to hear and rule on the emergency motion. The Clerk asked Muth to sit out in the Courtroom, where Muth waited for about 15 minutes for his Clerk to return. The Clerk also told

Muth the Judge instructed Muth to come back tomorrow at 11:00 a.m., and he refused to hear her motion. The Clerk also informed Muth that she had knowledge that the jury had already been selected and that trial was to begin at 1:00 p.m. Muth went for assistance to Chief Judge Evans' office, and spoke to his receptionist there, who informed her the Chief Judge was not in that day. The Clerk made calls to assist in the matter but ultimately told Muth there was nothing he could do and to go before Judge Varga.

19. Muth went to Courtroom 2406 and witnessed the plaintiff on the stand testifying.

20. Muth went to her office to prepare and file a motion for a mistrial.

21. When she returned to 2406, the jury was not present in the courtroom - only plaintiff's attorneys and Judge Varga and his clerk. The plaintiff's attorneys and Judge Varga were discussing jury instructions. Muth and Holstein both approached the bench. Judge Varga told them, "What do you want?" Muth answered, "To present a motion for mistrial." Judge Varga told them to sit and wait until the jury instruction conference was finished. Both Holstein and Muth asked to see them, and defense counsel stated, "You should have been here,." and they proceeded with the conference without Muth's and Holstein's input. Plaintiff's attorney, Olga Dmytriyeva, was writing out instructions and Muth and Holstein were unable to see them.

22. The jury was deliberating and Muth and Holstein presented the defendant's motion for mistrial. Muth argued that her mother's health had deteriorated and that she was the only person available to assist her, that the Court had knowledge as to her inability to be available for trial that week due to her mother's condition, that the

defendant had a right to be present for his own trial, the defendant's testimony was necessary, the defendant had a meritorious defense, and that proceeding to trial constituted a complete injustice to the defendant. The plaintiff's attorney argued that they did not believe the defendant's situation and that there was an opportunity for Muth to present the emergency motion. After hearing arguments from both parties, Judge Varga denied the motion for mistrial on the ground Judge Varga could not hear the motion for continuance which had to be presented to the Presiding Judge for a ruling. Judge Varga said that, "procedure is procedure, motion is denied."

23. If Beau was to testify at trial, he would address the testimony of the plaintiff that Beau assaulted, battered and sexually assaulted her on five separate occasions as alleged in the plaintiff's amended complaint and Beau would specifically testify that he never, at any time or at any place, assaulted, battered, or sexually assaulted the plaintiff. Beau gave a deposition in this case at which I was present and at the deposition, Beau specifically testified that he never, at any time, or at any place, including the five dates referenced in the plaintiff's amended complaint assaulted, battered, or sexually assaulted the plaintiff. In addition, Beau would testify to specific facts that would establish the affirmative defenses of consent, provocation, self-defense, defense of property and the plaintiff's contributory negligence.

24. After the closing argument, attorney Allison Muth appeared in Courtroom 2406 and, while the jury was deliberating, presented a motion for mistrial which was denied by the Court.

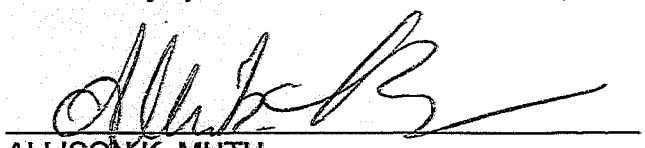
25. Holstein was present at the commencement of the trial and at the presentment of defendant's motion for mistrial.

26. During the trial, the only witness to testify was the plaintiff.

27. The jury deliberated for about one hour and came back with a verdict in favor of plaintiff in the amount on $1 million compensatory damages and $8 million in punitive damages.

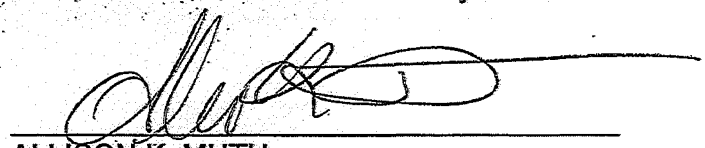
28. Plaintiff's attorneys have not provided Muth with copies of the exhibits that were furnished to the jury during the jury's deliberations.

29. On January 16, 2019, Defense counsel appeared before Judge Varga to submit a proposed order of the motions filed by Defendant. Judge Varga declined to review the proposed order without plaintiff's attorneys present.



ALLISON K. MUTH

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.



ALLISON K. MUTH

15.
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Volume II (Common Law Record)

Illinois Supreme Court Rule 342 (3):

Names of Witnesses
Plaintiff, Jane Doe

Pages which contain plaintiff's direct examination, cross examination and redirect examination:
Please note no transcript of any trial testimony in this matter exists.