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

Mary Owens, as independent administrator of the estate of Tempie Owens, deceased,	)	
Plaintiff,	)	
v.	)	No. 17 L 9349
Berkshire Nursing and Rehab Center, LLC, an Illinois limited liability company, d/b/a Aperion Care Forest Park, LLC,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

A motion for a new trial based on alleged errors in evidentiary rulings should not be granted unless the moving party demonstrates that the errors caused substantial prejudice and affected the trial's outcome. Here, the plaintiff has failed to establish that the trial judge committed error or that the error caused substantial prejudice affecting the trial's outcome. As the trial court acted within its discretion, the plaintiff's post-trial motion for a new trial must be denied.

Facts

On June 8, 2013, Berkshire Nursing and Rehab Center, LLC, admitted Tempie Owens as a resident. At the time, Tempie Owens suffered from several known medical conditions including hypothyroidism. While a resident of Berkshire's facility in 2015, she endured a series of falls. On December 6, 2015, Tempie Owens died.

On September 14, 2017, Mary Owens, Tempie's daughter and the independent administrator of Tempie's estate, filed a complaint against Berkshire pursuant to the Illinois Nursing Home Care Act (count one), professional negligence under the Illinois Wrongful Death Act (count two), institutional negligence (count three), and professional negligence under the Illinois Survival Act (count four). The remaining eight counts are not at issue in this memorandum opinion.

On February 23, 2023, Presiding Judge James P. Flannery assigned this matter for trial to Judge Joan E. Powell. This matter proceeded to trial the next day before Judge Powell, who ruled on all the parties' motions *in limine*. On March 13, 2023, Judge Powell granted co-defendant Lory Arquilla-Maltby's motion for a

mistrial based on testimony made by one of Mary Owens's expert witnesses. Judge Powell entered the order for a mistrial the same day.

On March 27, 2023, Judge Maura Slattery Boyle entered an order setting July 24, 2023, as the new trial date. On that date, this matter proceeded to trial before Judge Robert E. Senechalle. Judge Senechalle adopted each of Judge Powell's rulings on the parties' motions *in limine*.

Throughout the trial, Judge Senechalle had extensive discussions with counsel outside the presence of the jury regarding the appropriateness of particular lines of questioning by Owens's attorney. For example, Owens requested a missing evidence instruction—plaintiff's motion *in limine* number 17—three times, including once after Owens had rested her case. It does not appear that Judge Senechalle officially ruled on that motion *in limine*. According to the record provided to this court along with the briefs, Owens did not submit an Illinois pattern instruction 5.01—missing evidence—in her proposed jury instructions.

On August 8, 2023, the jury rendered a verdict in favor of both defendants Berkshire and Arquilla-Maltby. The same day, Judge Senechalle entered a judgment order on the jury's verdict.

On September 7, 2023, Owens filed a post-trial motion seeking a new trial based on various points of alleged error. On September 11, 2023, Judge Senechalle entered an order permitting Owens to file her post-trial motion instanter and in excess of 15 pages. Also on September 11, 2023, Arquilla-Maltby filed a motion requesting a finding pursuant to Illinois Supreme Court Rule 304(a).

On September 12, 2023, Judge Senechalle retired.

On September 13, 2023, Judge Toya T. Harvey entered an order setting an agreed briefing schedule on Owens's post-trial motion. On September 19, 2023, Judge Harvey entered another order setting an agreed briefing schedule on Arquilla-Maltby's motion for a Rule 304(a) finding. On September 25, 2023, Owens filed a motion incorporating: (1) a response to Arquilla-Maltby's motion for a Rule 304(a) finding; and (2) a motion for leave to file an amended motion for a new trial.

On October 3, 2023, Judge Harvey issued an order transferring the parties' post-trial motions to this court for consideration. On October 10, 2023, this court entered an order setting an agreed briefing schedule for Owens's pending motion for leave to file an amended post-trial motion and Arquilla-Maltby's pending motion for a Rule 304(a) finding.

The parties subsequently informed this court that they agreed to hold in abeyance the briefing on Owens's post-trial motion as to Berkshire pending this

court's decision on the two other pending motions. On December 21, 2023, this court denied Owens's motion for leave to file an amended post-trial motion to seek relief against Arquilla-Maltby on the grounds that the Code of Civil Procedure did not authorize the motion and that it was untimely. That same day, this court struck with prejudice Arquilla-Maltby's motion for a Rule 304(a) finding because the motion was untimely and unnecessary given that this court had previously issued a final and appealable judgment order against the plaintiff.

On March 19, 2024, this court entered an order setting an updated agreed briefing schedule on Owens's post-trial motion as to Berkshire. To be clear, that is the motion this court addresses in this memorandum opinion and order.

Analysis

The Code of Civil Procedure authorizes the filing of a post-trial motion to seek a new trial. 735 ILCS 5/2-1202(b). "On a motion for a new trial, the trial court will set aside the jury verdict and order a new trial only if (1) the jury verdict is contrary to the manifest weight of the evidence or (2) serious and prejudicial errors were made at trial in the exclusion or admission of evidence." *McHale v. W.D. Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 56. "A verdict is considered to be against the manifest weight of the evidence only when the opposite result is clearly evident or where the jury's findings are unreasonable, arbitrary, and not based upon any of the evidence." *Bland v. Q-West, Inc.*, 2023 IL App (2d) 210683, ¶ 10. "[F]or a new trial based on the evidentiary rulings, the law requires finding the error caused substantial prejudice and affected the outcome." *Browning v. Advocate Health & Hosp. Corp.*, 2023 IL App (1st) 221430, ¶ 64. The moving party bears the burden of establishing substantial prejudice. *Ramirez v. FCL Builders, Inc.*, 2014 IL App (1st) 123663, ¶ 198. For a motion for a new trial to be granted based on evidentiary rulings, the plaintiff must show that the trial judge committed an error that both: (1) caused substantial prejudice; and (2) affected the trial's outcome. *Browning,* 2023 IL App (1st) 221439, ¶ 64.

As noted above, Judge Senechalle retired after the trial in this case and did not handle any of the post-trial proceedings. Although this court did not hear the trial, this court has carefully reviewed the parties' submissions, including the trial transcripts and evidentiary exhibits. This opinion is based solely on a review of the cold record.

I. Forfeiture of Institutional Negligence and Professional Negligence Arguments

This court's consideration of Owens's motion for a new trial is guided by the Code of Civil Procedure and Illinois Supreme Court rules. According to the Code:

> (b) Relief desired after trial in jury cases, heretofore sought by reserved motions for directed verdict or motions for judgement notwithstanding the verdict, in arrest of judgment or for a new trial, must be sought in a single post-trial motion. . . . The post-trial motion must contain the points relied upon, particularly specifying the grounds in support thereof, and must state the relief desired, as for example, the entry of a judgment, the granting of a new trial, or other appropriate relief. . . .

735 ILCS 5/2-1202(b).

In her motion for a new trial and related briefing, Owens argues that Judge Senechalle made evidentiary rulings in error that prevented her from presenting evidence on the claim against Berkshire under the Nursing Home Care Act (count one). Owens's motion for a new trial does not assert errors with respect to the jury's verdict on the professional negligence claims under the Illinois Wrongful Death Act (count two) or the Illinois Survival Act (count four). The motion also does not address the trial court's granting of Berkshire's motion for a directed verdict with respect to the institutional negligence claim (count three). Berkshire argues that because Owens did not present an argument for a new trial regarding those three claims, Owens has waived all arguments regarding those claims.

"A party's failure to raise an issue in its petition for leave to appeal may be deemed a forfeiture of that issue." *Buenz v. Frontline Transp. Co.* 227 Ill. 2d 302, 320 (2008). The distinction between waiver and forfeiture is that "[w]hile waiver is the voluntary relinquishment of a known right, forfeiture is the failure to timely comply with procedural requirements." *Id.* at 320 n.2. As this court previously ruled, Owens filed her "single post-trial motion" as the statute provides. 735 ILCS 5/2-1202(b). As Owens did not raise any arguments for a new trial with respect to any claim other than her claim under the Illinois Nursing Home Care Act, Owens has forfeited those arguments.

II. Staffing; Owens's Motion *in Limine* Number 17; Jury Instruction

Owens argues that Judge Senechalle improperly precluded her from presenting evidence on staffing ratios and falls as violations of the Nursing Home Care Act. "The decision to admit evidence rests solely within the discretion of the trial court and will not be disturbed absent an abuse of discretion." *Foley v. Fletcher*, 361 Ill. App. 3d 39, 46 (1st Dist. 2005) (citing *Snelson v. Kamm*, 204 Ill. 2d 1, 33 (2003)). A trial court can be found to have abused its discretion only if a ruling is "arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the trial court's view." *Ittersagen v. Advocate Health & Hosp. Corp.*, 2020 IL App (1st) 190778, ¶ 75 (citing *Kunz v. Little Co. of Mary Hosp. & Health Care Ctrs.*, 373 Ill. App. 3d 615, 624 (1st Dist. 2007)).

Owens argues that Judge Senechalle improperly precluded her from questioning a witness, nurse Sandra Rojas, with respect to proper staffing ratios. During Rojas's trial testimony on August 2, 2023, Judge Senechalle called for a sidebar to discuss whether the questioning was proper. Relevant portions of that colloquy follow:

> THE COURT: So I want to be sure I understand what the purpose of this questioning of this witness is. Is there evidence that while she was on duty she received a lab report that she, meaning Nurse Rojas, didn't report to somebody?
>
> MR. DINIZULU [Owens's counsel]: No.
>
> THE COURT: Well, so she's not an employee of this nursing home, she's not an agent of them, so why are you asking her about—you're asking her to offer opinions about the standard of care at Aperion? I mean, that seems what it's like.
>
> MR. DINIZULU: Judge, nurses have a standard of care to follow. If they fail to follow their standard of care, it is a breach of the standard of care, and it's imputative to the facility. . . . This particular [nurse] out of all the nurses that I evaluated was actually the most sophisticated and gave a lot of information in her deposition about standard of care. She's an important witness not just for what happened but explaining the process.
>
> And so when the Court is telling me—I think the Court is telling me I can't ask her standard of care questions when it's already been disclosed, it links up with the care of not only her in this case but other people in the case, interpreting the policies, answering the policy, all those things were things that were disclosed and she testified to and related directly to what Nurse Price testified and Dr. Davey.
>
> THE COURT: I don't understand that argument. It's hard to know what you're doing because you ask her a question, and then if she says she doesn't remember or she doesn't give the answer that either you want or you're expecting, then you are trying to impeach her, and I'm not following this at all.
>
> MR. SCHILLER [Defendant's counsel]: The objection was based on the fact this is not an (f)(3) witness, this is a fact witness. They're asking her about facts of her case. . . . [T]hey've already named Nurse Price, they've already named Dr. Davey. Those are the standard of care witnesses.
>
> So I think when you're asking is it appropriate to do this, should you follow this, if she's talking about herself, I get it, but when she's

talking about something that has nothing to do with her, that's the basis of my objection.

MR. DINIZULU: If she knows what the policies are and whether or not those policies are what is expected to the nurses and she testified already today that a particular policy, that's what it was.

THE COURT: So far she's testified the policies you showed her, the one, she doesn't know that they're their policies and so—

MR. DINIZULU: The fact—

THE COURT: I mean—

MR. DINUZULU: Clearly this is a difficult witness who's being contrary before and during this process, and the fact that I'm trying to use a basic tool to impeach them should not be held against me. The problem is she doesn't have the deposition to refresh, so I'm using that to impeach. She's offered these opinions actually in there.

She is an (f)(2). A nurse can still provide opinion testimony. It's the reason why when we are critical of a nurse we have to get another nurse to get opinion testimony.

THE COURT: They can offer opinion testimony, treaters can, relative to their treatment, but this just seems different. You can keep going, but I don't know. I thought you were going to ask her about her care of this patient and what she did, things that she did, but you're asking her about—and she's not part of it.

She's not understanding you. She thinks you're criticizing her for not doing something. That's part of the problem—wait a second. Part of the problem that you have is shouldn't you report this and get a lab report. She doesn't remember this patient. So that's one of the reasons why she's defensive.

MR. DINIZULU: She's defensive because in the deposition we did talk about whether or not some of her care was breaches of the standard of care. So she remembers that, number one. It's not because today she's figuring out for the very first time.

THE COURT: Mr. Schiller, your objections to these questions and answers, to the extent we're getting answers, on these nursing standard of care questions, you have a standing objection to these questions. I'm going to let Mr. Dinizulu get what he can out of this witness. We'll see.

MR. SCHILLER: May I say if he asks about this specific case, if he says she's opining about the nursing standard of care in this case, she hasn't rendered that opinion anywhere.

THE COURT: I know.

Plaintiff's Ex. 9, pp. 60-65.

This colloquy does not support Owens's argument that Judge Senechalle abused his discretion in sustaining objections to the questioning of nurse Rojas. Indeed, Judge Senechalle allowed Owens's questioning of Rojas to continue with respect to her treatment of Tempie Owens. Judge Senechalle did, however, properly sustain objections to questions about Rojas's opinions as to the nursing standard of care.

Owens also argues that Judge Senechalle improperly required Owens to present expert testimony with respect to staffing ratios. In support, Owens quotes Judge Senechalle's ruling during a sidebar in the midst of nurse Kerry Garcia's testimony. Judge Senechalle inquired as to the relevance of Owens's questions on direct examination regarding Berkshire staffing levels. As the record provides:

MR. SANDBERG [Owens's counsel]: I have a couple questions for you regarding staffing at the facility.

MR. SCHILLER: Objection, your honor, relevance.

THE COURT: Sustained, uh-huh.

MR. SANDBERG: Judge, at another time I'd like to make an offer of proof if you don't mind.

THE COURT: Well, I mean, do you want to be heard? I'm happy to—

MR. SANDBERG: Yeah.

* * *

(Whereupon, the following proceedings were had outside the presence and hearing of the jury.)

THE COURT: Okay. So what's the relevance of a question about staffing?

MR. SANDBERG: Well, the relevance of the issue of staffing is there's a number [*sic*] of different parts. Part of the plaintiff's allegations is the failure of the facility to accurately document her declining clinical picture at various times during her residency in 2015. We have tried to address and obtain these records related to staffing because the State sets the staffing rules and regulations. They—we have the census information, but we don't have the payroll information from Berkshire, which is necessary in order to know whether or not they were sufficiently staffed, properly staffed with the right skill set.

THE COURT: Okay. Well, is there—is there any—is there any expert opinion in the case that they weren't properly staffed and that somehow led to her injuries?

MR. SANDBERG: That the issues raised by the expert is that they—is that they—there was not a sufficient clinical documentation of her declining health and one of the reasons could be or potentially could be staffing. The problem is—

THE COURT: Who said that?

MR. SANDBERG: —because we don't—

THE COURT: Who said it could be staffing?

MR. SANDBERG: Oh, I—I don't think that—

MR. DINIZULU: Can I speak? No? No speak?

THE COURT: . . . Go ahead.

MR. DINIZULU: There's a motion in limine, No. 17, that Judge Powell reserved to hear the testimony of the witnesses, and the testimony of the witnesses could not opine as to them not having enough staff because they didn't provide the data necessary to interpret that as required by state law. The state law requires them to have a staffing ratio of nurse to—skilled nurse to certified [nursing] assistants for their patients per the census. We requested all the information. It was ordered to be turned over and they did not have all the information. That one piece that they did not have is the payroll information to indicate those staff that were present on that day.

> THE COURT: But I'm not hearing any kind of discovery issues. Was there a sanction entered that then somehow, you know, relates to evidence that can be used at trial? So—
>
> MR. DINIZULU: That's what the motion in limine was for, and so the purpose is to identify with the witness whether that information was provided.
>
> THE COURT: No. No. The objection is sustained as to the question about staffing. Go ahead. Let's go.

Plaintiff's ex. 11, pp. 146-50.

The record plainly shows that Judge Senechalle was not improperly requiring expert testimony for staffing ratios. Rather, he was trying to establish the relevance of Owens's questioning of Garcia as to staffing, the relevance of which could have been established had the experts opined that Berkshire was not properly staffed and that such deficiencies led to Tempie Owens's injuries. Owens did not, however, raise the issue of staffing with either of her expert witnesses.

Owens also argues that Judge Senechalle failed to consider and review plaintiff's motion *in limine* number 17 (requesting a missing evidence instruction) as to staffing after Judge Powell had reserved the motion *in limine*. Judge Senechalle twice declined to rule on the motion *in limine* because Owens had raised the issue at an improper time. Owens first raised the issue in the middle of a nursing home witness's testimony, and, second, immediately before Berkshire's former nursing home administrator took the stand. Owens then rested her case. The third time that Owens raised the issue was after both parties had rested their cases on August 7. At that point, Judge Senechalle stated:

> THE COURT: Well, both sides have rested their case. I'm ruling on these motions based on the evidence that's been presented, and so there isn't any evidence in the record about the—that there was an absence of staffing or that an absence of staffing had anything to do with the outcome of this case, so that's all I am saying. I don't—I am not making any comment on motion in limine No. 17. I'm making my ruling based on the evidence that's been presented to the jury.

Plaintiff's ex. 13, p. 31.

The record further belies Owens's argument that Judge Senechalle abused his discretion by excluding testimony on staffing or declining to rule on plaintiff's motion *in limine* number 17. Judge Senechalle's reasoning is well documented in the record and largely comports with Judge Powell's prior rulings. Judge

Senechalle's rulings regarding questioning are strikingly consistent by allowing Owens to continue asking questions although he had concerns. As this colloquy shows:

> THE COURT: So my position is this. I think that—I mean, I looked through this. I don't see any testimony from the doctor that indicates that had she been taken to the hospital on December 5th that the outcome would have been different.
>
> Wait a second. I think that for purposes of this witness you can ask her if she remembers having a conversation with Ms. Owens on the 5th. And if she says that she remembers it, you can ask her what she remembers about the conversation. If she doesn't remember it, then that's it for the conversation. Then we'll deal with the issue with Ms. Owens when we get there. What else?
>
> MR. DINIZULU: So I can't ask her about her experience treating or—not treating but identifying the signs and symptoms of respiratory distress?
>
> THE COURT: You can, but I'm—all I'm saying is I'm not—I still have a serious question about whether there is going to be any argument or any issue on jury instructions to this issue, but in order to keep going with this witness, you can ask her those questions.

See Plaintiff's ex. 9, p. 22.

Owens's frustration that Judge Senechalle did not officially rule on the motion *in limine* is understandable. There is, however, a vast distinction between an attorney's frustration with a judge and that judge's abuse of discretion. As the record shows in this case, in each instance in which Judge Senechalle considered Owens's motion *in limine* number 17, he provided Owens with various opportunities to explain the reasons for the questioning, allowed questioning to continue, and sustained objections to particular questions. Each of those decisions was well within Judge Senechalle's discretion. In short, Owens has failed to provide evidence that Judge Senechalle made a ruling that was "arbitrary, fanciful, unreasonable," or that no reasonable person would adopt. *Ittersagen*, 2020 IL App (1st) 190778, ¶ 75.

The lack of an official ruling on plaintiff's motion *in limine* number 17 appears, ultimately, to be irrelevant as Owens failed to submit a proposed 5.01 jury instruction addressing the failure to produce evidence or a witness. This court reaches that conclusion based on Owens's exhibit four attached to her motion and exhibit five attached to her reply brief; neither of which included a 5.01 instruction. The omission is significant because a judge often has discretion to issue a particular instruction. Instruction 5.01—Failure to Produce Evidence or a Witness—explicitly provides in its notes section that, "Whether to give IPI 5.01 is a matter within the

sound discretion of the trial court." I.P.I. 5.01 (notes) (citing *Roeseke v. Pryor*, 152 Ill. App. 3d 771 (1st Dist. 1987); *Anderson v. Chesapeake & Ohio Ry. Co.*, 147 Ill. App. 3d 960 (1st Dist. 1986)). In short, Judge Senechalle did not abuse his discretion because Owens failed to supply him with the jury instruction necessary to establish any abuse of discretion.

III. Falls

Owens argues that Judge Senechalle improperly precluded her from presenting evidence on falls as violations of the Nursing Home Care Act. As to the introduction of evidence, Owens, once again, fails to show that Judge Senechalle abused his discretion by precluding questioning regarding falls. Judge Powell had originally denied Berkshire's motion *in limine* number 31 to bar reference of Tempie Owens's falls at Berkshire because of the relationship between the falls and her "alleged unmanaged hypothyroidism, and the symptoms of that, confusion, muscle weakness, lethargy, and more." Plaintiff's ex. 18, p. 139.

Yet Judge Powell also granted parts of Berkshire's motion *in limine* number 27 barring opinions by physicians regarding falls. Owens's barred opinions included: "Residents in nursing homes should not suffer from multiple falls. In this particular case, Ms. [Tempie] Owens was confined to a wheelchair or bed, and can reasonably be protected from falls with standard nursing home interventions." Defendant's ex. B, p. 7. These two rulings by Judge Powell allowed references to the falls at Berkshire, but within the limited scope of the patient's alleged unmanaged hypothyroidism, not the general failure of Berkshire to prevent falls.

Later, at trial, Judge Senechalle reaffirmed Judge Powell's prior ruling. He stated:

> [I]t's clear to me that what—what Judge Powell's position was, which is my position, is that the falls—the falls can be mentioned, and Judge Powell said this. In relationship to—as it relates to [Tempie Owens's] weakness and hypothyroidism and as to—as signs of concern for—for her—you now, for her overall medical condition and ultimately for the fact that—that her hypothyroidism was not under control and was the cause of this weakness and so forth, but not for—for really any other purpose to suggest that—that they weren't caring for her properly or there was something that they should have done in relationship to the falls. So, again, I think Judge Powell was clear about that. And I think that her rulings on 27 and 31 are consistent. . . .

Plaintiff's ex. 15, p. 19.

To be clear: Judge Senechalle's ruling on the evidence as to falls was consistent with Judge Powell's ruling. For Owens to argue that Judge Senechalle abused his discretion also means that Owens believes Judge Powell abused her discretion. Such a conclusion must fail by logic alone because it suggests that two seasoned trial judges acted as "no reasonable person" would in allowing evidence of falls to come in for a limited purpose. *See Foley*, 361 Ill. App. 3d at 46.

Owens further argues that Judge Senechalle improperly required expert testimony as to falls because this case involved "personal care," not "medical care." The Nursing Home Care Act helps to explain the distinction. Under the statute,

> 'Neglect' means a facility's failure to provide, or willful withholding of, adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness of a resident.

210 ILCS 45/1-117. The act also provides that,

> 'Personal care' means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual, who is incapable of maintaining a private, independent residence or who is incapable of managing his person whether or not a guardian has been appointed for such individual.

210 ILCS 45/1-120.

Further explanation is provided by case law. For example, Owens relies on *Myers* to support her argument that because the standard of care under the statute is ordinary, not professional, negligence, Judge Senechalle should not have required Owens to present expert testimony. *See Myers v. Heritage Enters.*, 354 Ill. App. 3d 241 (4th Dist. 2004). *Myers* involved a certified nursing assistant (CNA) who dropped a nursing home resident while moving her from a wheelchair to a bed using a Hoyer lift. *Id.* at 242. The *Myers* court found that "CNAs moving a nursing home resident does not constitute skilled medical care requiring the professional negligence instruction." *Id.* at 247. As the alleged negligent act fit under the statute's "personal care" definition by a CNA—a position needing minimal training—the *Myers* court held that "the nursing assistant position is not a professional position requiring the professional negligence instruction." *Id.* at 248. Not surprisingly, Owens seeks to draw a parallel between *Myers* and this case based on the number of falls Tempie Owens endured.

In response, Berkshire does not quarrel with *Myers* and says it was correctly decided because it involved "personal care." According to Berkshire, *Myers* is distinguishable because the facts of this case show the type of care provided to Tempie Owens was "medical care." As the type of care differed, so, too, did the necessary evidence needed to prove a breach of the standard of medical care.

As discussed above, Judge Senechalle admitted evidence of Tempie Owens's falls as they related to Berkshire's alleged improper medication of Tempie Owens's hypothyroidism. Owens highlighted actions by Berkshire staff such as taking and reporting blood labs, understanding TSH levels, and providing appropriate dosage of Tempie Owens's synthetic thyroid replacement medication. These actions—particularly understanding TSH levels and prescribing appropriate doses of medications—do not fall under the definition of "personal care" because they constitute medical care and treatment that a CNA cannot administer. The law is plain that care requiring a high level of training to administer constitutes "medical care," requiring expert testimony. *Childs v. Pinnacle Health Care, LLC*, 399 Ill. App. 3d 167, 182-83 (2d Dist. 2010). The evidence introduced showed conclusively that Berkshire needed a nurse practitioner with substantial training to prescribe and medicate Tempie Owens. Moreover, it was this particular type of care that Owens alleged Berkshire failed to provide and, therefore, formed the very basis of Owens's negligence claim. Owens has, therefore, failed to establish that Judge Senechalle erred in requiring expert testimony that Berkshire violated the standard of care by failing to control Tempie Owens's hypothyroidism.

Even if Judge Senechalle did err by requiring expert testimony on this subject, Owens has failed to show that such error caused her substantial prejudice and affected the outcome of the trial. Indeed, despite Owens's concerns that Judge Senechalle improperly applied a medical standard of care, Judge Senechalle read the jury instruction under the Nursing Home Care Act's ordinary negligence standard, not the instructions for professional negligence.

In *Myers*, the court reversed the verdict largely because the jury had received a professional negligence instruction when the proper standard of care was ordinary negligence. *Myers*, 354 Ill. App. 3d at 248. That error could have adversely affected the outcome of the case. *Id.* In contrast here, regardless of whether Berkshire's actions were "personal care" or "medical care," the jury received only ordinary negligence instructions. Owens has, therefore, failed to establish that she was substantially prejudiced and that the error affected the trial's outcome.

Conclusion

For the reasons presented above, it is ordered that:

1. Owens's post-trial motion for a new trial is denied; and
2. This order is final and appealable.

John H. Ehrlich, Circuit Court Judge

Judge John H Ehrlich

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