

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Argued December 10, 2024

Decided September 5, 2025

BeforeTHOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1660

DAVID W. MAGNUSON,
*Plaintiff-Appellant,**v.*TRULITE GLASS & ALUMINUM
SOLUTIONS, LLC,
*Defendant-Appellee.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:19-cv-06158

Gabriel A. Fuentes,
*Magistrate Judge.***ORDER**

Plaintiff-Appellant David W. Magnuson appeals an amended jury verdict and the district court's denial of his Rule 59(a) motion for a new trial arising from a negligence lawsuit stemming from a rear-end collision. While the jury returned a unanimous verdict of \$122,500 in favor of Magnuson, this award fell well below the \$14.3 to \$20.4 million mark that he sought.

Magnuson suffered multiple injuries after Defendant-Appellee Trulite Glass & Aluminum Solutions, LLC's (Trulite's) employee struck his car at a stoplight in

September 2017. *Magnuson v. Trulite Glass & Aluminum Sols., LLC*, No. 19 CV 6158, 2024 WL 1216338, at *1 (N.D. Ill. Mar. 21, 2024). Magnuson sued in federal court, alleging one count of negligence and seeking \$14.3 to \$20.4 million in damages for his injuries.¹ Trulite did not dispute its negligence in connection with the vehicle collision but denied the severity of Magnuson's resulting injuries. The case proceeded to a seven-day jury trial in July 2023.

The trial evidence showed that Trulite's employee was driving a box truck when he struck the back of Magnuson's vehicle, which was stopped at a red light. After the collision, Magnuson declined to go to the hospital, was treated at the scene by paramedics with ice, and drove himself to a meeting he had later that day. Magnuson testified that the vehicle collision caused him a spinal cord injury that led to a spinal fusion and a tear to his left shoulder labrum. Magnuson and several of his lay and expert witnesses testified that he experienced emotional distress. The defense presented medical evidence that Magnuson had preexisting multilevel degenerative disc disease and an impingement of the spinal canal caused by osteophytes that developed over many years. They argued that Magnuson did not sustain a spinal injury as evidenced by his ability to exit his vehicle after the accident and contended that Magnuson would have developed myelomalacia (a softening of the spinal cord) even if he was not involved in the accident.

Trulite admitted liability. The jury returned a unanimous verdict in favor of Magnuson, awarding him \$122,500. Magnuson filed a motion pursuant to Rule 59(a) requesting a new trial on the issue of damages. The district court denied Magnuson's Rule 59(a) motion for a new trial. Magnuson subsequently appealed the district court's denial of his Rule 59(a) motion and the amended jury verdict as to damages.

The standard of review for a denial of a motion for a new trial under Federal Rule of Civil Procedure 59 is abuse of discretion. *Ewing v. 1645 W. Farragut LLC*, 90 F.4th 876, 886 (7th Cir. 2024) (citing *Kapelanski v. Johnson*, 390 F.3d 525, 530 (7th Cir. 2004)).

"We will not set aside a jury verdict if a reasonable basis exists in the record to support the verdict, viewing the evidence in the light most favorable to the prevailing

¹ Due to the diversity of the parties' citizenship and the amount in controversy, the district court had diversity jurisdiction under 28 U.S.C. § 1332(a)(1). This Court has jurisdiction under 28 U.S.C. § 1291.

party, and leaving issues of credibility and weight of evidence to the jury.” *Kapelanski*, 390 F.3d at 530 (cleaned up).

Magnuson argues that the district court erred during the defense’s closing arguments in allowing Trulite’s counsel to: 1) assert that Magnuson should have sued his physician for malpractice for the delay in diagnosing his myelomalacia; and 2) imply that he was a litigious person because he previously filed an unrelated unemployment lawsuit. “Parties seeking a new trial based on counsel’s improper comments must show that ‘misconduct occurred and that it prejudiced their case.’” *Viramontes v. City of Chicago*, 840 F.3d 423, 431 (7th Cir. 2016) (quoting *Christmas v. City of Chicago*, 682 F.3d 632, 642 (7th Cir. 2012)). Magnuson takes issue with Trulite’s counsel’s remarks, stated in part:

Well, if [Dr. Fliman] missed the mark, Members of the jury, she missed the signs and symptoms, and if they think that plaintiff’s condition was worse off because there was a nine-month delay in diagnosing myelomalacia, why didn’t they sue Dr. Fliman for committing malpractice?

This isn’t the only litigation that the plaintiff has filed. Remember he sued his employer in [the] 2010-2015 timeframe, and you know that because he told us. That was the reason why he was off work from 2010 to 2016. He needed to focus on his lawsuit during his “semiretirement.” If there was a real, legitimate basis to say that the negligence of Dr. Fliman caused any part of this man’s life-changing condition, you know darn well the other defendant named in this lawsuit would have been Dr. Fliman.

Dkt. 231 at 1507–08. Even if we found these comments improper, Magnuson would not be entitled to a new trial. “As we have repeatedly recognized, improper comments during closing arguments rarely rise to the level of reversible error[.]” *Christmas*, 682 F.3d at 642 (internal quotations omitted)

“Improper statements during closing arguments warrant reversal only if they influenced the jury in such a way that substantial prejudice resulted to the opposing party.” *Mayall v. Peabody Coal Co.*, 7 F.3d 570, 573 (7th Cir. 1993) (internal citations omitted) (quoting *Arcor, Inc. v. Textron, Inc.*, 960 F.2d 710, 713 (7th Cir. 1992)). Additionally, “[c]urative instructions to the jury mitigate harm that may otherwise have resulted from improper comments during closing arguments.” *Soltys v. Costello*, 520 F.3d 737, 745 (7th Cir. 2008).

First, there is no evidence that Trulite's counsel's closing arguments were substantially prejudicial. We must review the closing arguments in context. Taken as a whole, the closing argument merely pointed out that suing Dr. Fliman was consistent with Magnuson's theory of the case. Magnuson's prior lawsuit against his employer was raised simply to show that his failure to sue his physician was not due to some aversion to litigation. Secondly, the court's jury instructions cured any alleged improper statements made in closing. The district court instructed the jury that opening and closing statements should not be considered as evidence. We presume that juries follow the instructions given to them by the court. *United States v. Garcia*, 81 F.4th 691, 698 (7th Cir. 2023) (jurors presumed to follow instructions absent a showing of an "overwhelming probability" that they did not or could not follow them). There is no evidence that the jury was unable to follow the court's instructions to refrain from treating Trulite's counsel's closing remarks as evidence. In fact, the jury found in favor of Magnuson and awarded him a six-figure damage amount, well above the defense's requested amount. Because the statements were not substantially prejudicial when reviewed in context and, even if the statements were improper, the district court remedied any potential harm of the alleged improper closing arguments, we find there is no abuse of discretion.

Magnuson also contends that the district court committed a reversible error when it refused his future emotional distress jury instruction and thus refused to allow a separate line item on the verdict form. Along the same lines, the court denied his argument of future depression, anxiety, and mental suffering as an element of damages during rebuttal.

"We review [a district court's denial of a jury instruction] decision[] for abuse of discretion." *Downing v. Abbott Lab's*, 48 F.4th 793, 810 (7th Cir. 2022) (citing *E.E.O.C. v. AutoZone, Inc.*, 809 F.3d 916, 921–22 (7th Cir. 2016)); *Brown v. Smith*, 827 F.3d 609, 614 (7th Cir. 2016). "To the extent 'the case turns on a question of law,' our review is de novo." *Downing*, 48 F.4th at 810 (quoting *Kuberski v. Rev Recreation Grp., Inc.*, 5 F.4th 775, 779 (7th Cir. 2021)). In this case, we review for abuse of discretion. We "will reverse only if the instructions in their entirety so thoroughly misled the jury that they caused prejudice." *Farnik v. City of Chicago*, 1 F.4th 535, 544 (7th Cir. 2021) (internal quotations omitted).

In diversity actions, state law determines the substance of jury instructions and federal law governs the procedures in formulating and giving such instructions. *Karahodzic v. JBS Carriers, Inc.*, 881 F.3d 1009, 1015 (7th Cir. 2018). In Illinois, "[a]ll that is required to justify the giving of an instruction is that there be some evidence in the record to justify the theory of the instruction." *LaFever v. Kemlite Co.*, 185 Ill. 2d 380, 406 (1998)

(internal quotations omitted). Illinois Pattern Jury Instruction Civil No. 30.05.01 addresses “[t]he emotional distress experienced [and reasonably certain to be experienced in the future].” Additionally, the Instruction’s “Notes on Use” states, “[t]his element is to be inserted ... when the evidence justifies its use and when the court rules that damages for emotional distress can be claimed.” Illinois Pattern Jury Instruction Civil No. 30.05.01, Section 30, p. 14 (Rev. 2021).

According to Magnuson, he met his evidentiary burden to allow the use of the future emotional distress jury instruction because multiple witnesses’ testimony showed he suffered from a permanent physical condition after the collision that caused ongoing emotional distress. We do not agree that he met the burden for this instruction. The district court correctly found that Magnuson had not provided any “evidence [that] justifies [the emotional distress instruction’s] use.” Magnuson’s six witnesses including his stepson, sister, two treating physicians, expert neuropsychologist, and Magnuson’s own testimony, all described his present and past suffering of emotional distress or the permanency of his physical injury, but critically did not, as he suggests, imply a permanent emotional injury or future emotional distress. Magnuson’s physician, Dr. Cristea, testified specifically about the permanency of cervical radiculopathy, cervical myelomalacia, and imbalance. However, none of the testimony cited by Magnuson discussed his future emotional health or a permanent prognosis of his past or current mental health issues. “The question of what issues have been raised by the evidence is within the discretion of the trial court.” *LaFever*, 185 Ill. 2d at 406. We find the district court was correct not to include an emotional distress jury instruction.

Magnuson also raises several other issues including whether the district court erred by allowing: 1) defense counsel to ask questions on cross examination about photographs taken during his vacations and to reference the photos during closing argument; 2) evidence of his 1997 car accident; 3) defense counsel to argue causes of Magnuson’s injury; 4) defense counsel to argue that Magnuson failed to prove he suffered a traumatic brain injury; and 5) a defense expert to testify to supposedly previously withdrawn opinions. Evidentiary rulings are reviewed for abuse of discretion. *Karahodziec*, 881 F.3d at 1015 n.2 (citing *Reed v. Freedom Mortg. Corp.*, 869 F.3d 543, 548 (7th Cir. 2017)). We have reviewed these issues, and we find there is no abuse of discretion.

AFFIRMED